TEXAS REGISTER

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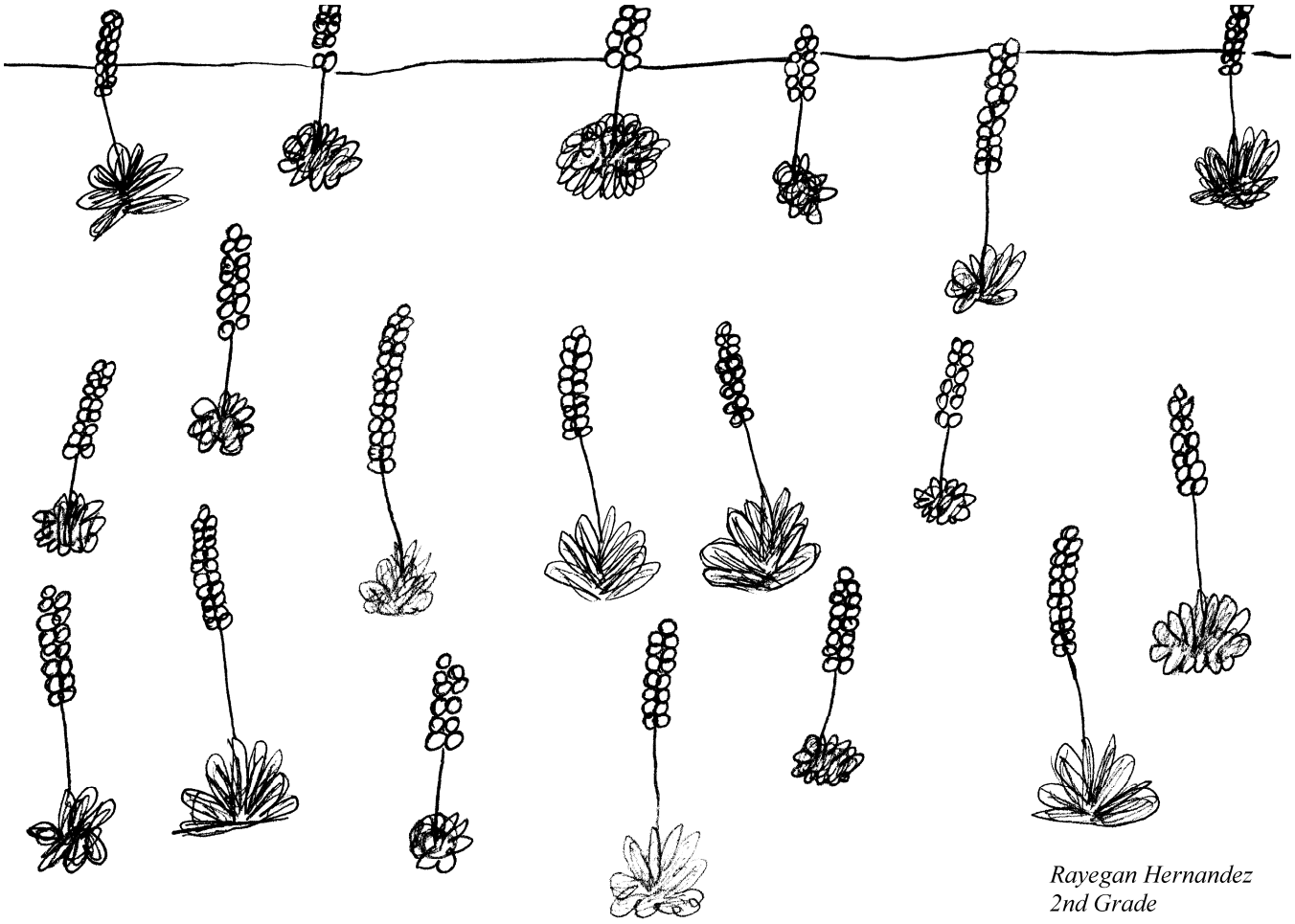

Rayegan Hernandez
2nd Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 23, 2008

Appointed to the Advisory Board of Economic Development Stakeholders for a term to expire September 1, 2009, Tracye McDaniel of Houston (replacing Trinidad Mendenhall of Houston whose term expired).

Appointed to the Advisory Board of Economic Development Stakeholders for a term to expire September 1, 2011, Alejandro Meade III of Brownsville (replacing Edward Torres of San Antonio whose term expired).

Appointed to the Advisory Board of Economic Development Stakeholders for a term to expire September 1, 2011, Gary Fickes of Southlake (Mr. Fickes is being reappointed).

Appointed as State Demographer for a term to expire at the pleasure of the Governor, Karl Eschbach of San Antonio (replacing Steve Murdock of Helotes who resigned).

Designating Michael Bray of El Paso as Presiding Officer of the Manufactured Housing Board for a term at the pleasure of the Governor. Mr. Bray is replacing Valeri Stiers Malone of Holliday as presiding officer.

Appointments for April 25, 2008

Appointed to the OneStar Foundation for a term to expire March 15, 2010, Joshua Carden of Weatherford.

Appointed to the OneStar Foundation for a term to expire March 15, 2011, Lewis Timberlake of Austin (Mr. Timberlake is being reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2011, Catherine Landtroop of Plainview (replacing W. Fred Smith of Tyler who resigned).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2011, Taylor King Ellison of Austin (Ms. Ellison is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2011, Michael Kling of Leander (Mr. Kling is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2011, Stuart Babenco of El Paso (Mr. Babenco is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2011, Nancy Bowlin of Midland (replacing Courtney Johnson of Waco whose term expired).

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2013, Patrick Mizell of Houston.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2013, Linda Russell of Kemah.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2013, Tommy Harwell of El Paso.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2011, Michael Slack of Austin.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2011, Wanda Rohm of San Antonio.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2011, Harold Jenkins of Irving.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2009, Ramiro Galindo of Bryan.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2009, William Strawn of Austin.

Appointed to the Judicial Compensation Commission, pursuant to HB 3199, 80th Legislature, Regular Session, for a term to expire February 1, 2009, Elizabeth Whitaker of Dallas. Ms. Whitaker will serve as presiding officer of the commission.

Appointments for April 28, 2008

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2011, Narciso Escareno of Brownsville (replacing Michael Nogueira of Fredericksburg whose term expired).

Appointed to the San Jacinto River Authority Board of Directors, pursuant to SB 526, 78th Legislature, Regular Session, for a term to expire October 16, 2011, Joseph L. Stunja of Kingwood (replacing Linda Koenig of Houston whose term expired).

Appointed to the San Jacinto River Authority Board of Directors, pursuant to SB 526, 78th Legislature, Regular Session, for a term to expire October 16, 2011, Joseph Turner of Willis.

Appointments for April 30, 2008

Appointed to the Texas Transportation Commission for a term to expire February 1, 2013, William Meadows of Fort Worth (replacing Ric Williamson of Weatherford who is deceased).

Appointed to the Texas Transportation Commission for a term to expire February 1, 2013, Deirdre Delisi of Austin (replacing Esperanza "Hope" Andrade of Boerne whose term expired). Ms. Delisi will serve as presiding officer of the commission.

Appointments for May 1, 2008

Appointed to the Texas State Board of Veterinary Medical Examiners for a term to expire August 26, 2013, John David Clader of Pleasanton (replacing Robert L. Lastovica of Fredericksburg whose term expired).

Appointed to the Texas State Board of Veterinary Medical Examiners for a term to expire August 26, 2013, David W. Rosberg, Jr. of Mason (replacing Guy Wayne Johnsen of El Paso whose term expired).

Appointed to the Texas State Board of Veterinary Medical Examiners for a term to expire August 26, 2013, David R. Kercheval of Grandview (replacing Dawn Elise Reveley of Blanco whose term expired).

Designating Bud Alldredge of Sweetwater as Presiding Officer of the Texas State Board of Veterinary Medical Examiners for a term at the pleasure of the Governor. Mr. Alldredge is replacing Robert L. Lastovica of Fredericksburg as presiding officer.

Rick Perry, Governor

TRD-200802418

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Proclamation 41-3147

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my April 2, 2008, proclamation to include Shelby County, certifying that severe storms and flooding on March 30, 2008 and continuing, have caused a disaster in this county.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 24th day of April, 2008.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200802419

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0707-GA

Requestor:

The Honorable John J. Carona

Chair, Committee on Transportation & Homeland Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Amount of exemption from ad valorem taxation to which certain disabled veterans are entitled (RQ-0707-GA)

Briefs requested by June 9, 2008

RQ-0708-GA

Requestor:

The Honorable Byron C. Cook

Chair, Committee on Civil Practices

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of a hospital district to replenish employee retirement funds embezzled by a third-party administrator and accept assignment of employees' claims against the third-party administrator (RQ-0708-GA)

Briefs requested by June 9, 2008

RQ-0709-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether certain pre-kindergarten educational programs offered by the Spring Branch Independent School District are subject to the licensing requirements of the Department of Family and Protective Services (RQ-0709-GA)

Briefs requested by June 12, 2008

RQ-0710-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether a school district may use district funds to pay a traffic fine imposed by a municipality (RQ-0710-GA)

Briefs requested by June 12, 2008

RQ-0711-GA

Requestor:

The Honorable Joe Deshotel

Chair, Committee on Economic Development

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the City of Port Arthur may transfer a former fire station to a non-profit public radio station (RQ-0711-GA)

Briefs requested by June 13, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200802509
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 14, 2008

♦ ♦ ♦

Opinions

Opinion No. GA-0622

The Honorable Jeff Wentworth

Chair, Jurisprudence Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether persons operating or participating in a pilot needle- and syringe-exchange program authorized for Bexar County by Government Code section 531.0972 may be prosecuted for possessing drug paraphernalia under Health and Safety Code section 481.125 (RQ-0630-GA)

S U M M A R Y

In May of 2007, the Legislature authorized a pilot program in Bexar County "to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases." TEX. GOV'T CODE ANN. §531.0972 (Vernon Supp. 2007). The legislation provided that the Health and Human Services Commission "*may* provide guidance" to Bexar County in establishing such a program. *Id*. (emphasis added). The statute also *allowed* Bexar County to include in its pilot program a needle- and syringe-exchange program. *See id*.

The Texas Controlled Substances Act provides that possession or delivery of drug paraphernalia--including "a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body"--is an offense that subjects a person to criminal prosecution. TEX. HEALTH & SAFETY CODE ANN. §481.002(17)(K) (Vernon Supp. 2007).

Because a needle and syringe exchange is an optional component of Bexar County's pilot disease-prevention program, the program need not include a needle- and syringe-exchange component. If Bexar County's pilot disease-prevention program does not include a needle and syringe exchange, a person would not be subject to prosecution under section 481.125 of the Health & Safety Code for participating in the program. If, however, Bexar County elects to include such a needle- and syringe-exchange program as part of this overall disease-prevention program, the participants in that program appear to be subject to prosecution under the Texas Controlled Substances Act because the Legislature did not except them from such prosecution.

In contrast to the Bexar County pilot-program statute, the Legislature has, in numerous statutes, adopted express language that excludes certain activities from criminal prosecution under the Texas Controlled Substances Act. Because the Legislature has expressly demonstrated its ability and willingness to exclude otherwise criminal acts from prosecution under the Texas Controlled Substances Act--but did not do so here--this office can neither assume nor legislate such an intent.

Additionally, even if the participants are not subject to prosecution under the Texas Controlled Substances Act, participants may face criminal charges under other Texas or federal statutes.

Finally, any decision to prosecute program participants is a matter of prosecutorial discretion.

Opinion No. GA-0623

The Honorable Warren Chisum

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a foreign corporation may transport horsemeat for human consumption in-bond through Texas for immediate export abroad (RQ-0623-GA)

S U M M A R Y

Chapter 149 of the Agriculture Code makes it an offense for any person to sell horsemeat for human consumption, possess horsemeat with the intent to sell it as food for human consumption, or transfer horsemeat to a person who intends to sell it for human consumption irrespective of the origin or destination of the horsemeat. A court would likely find that section 1553 of the Tariff Act of 1930 and federal regulations promulgated thereunder do not preempt the application of chapter 149 to a foreign corporation that transports horsemeat intended for sale as food for human consumption in-bond through Texas for immediate export abroad. Similarly, a court would likely find that the application of chapter 149 to a foreign corporation that transports such horsemeat in-bond through Texas for immediate export abroad does not violate the federal dormant Commerce Clause by discriminating against or unduly burdening interstate or foreign commerce.

Opinion No. GA-0624

The Honorable Jana Duty

Williamson County Attorney

Williamson County Justice Center, Second Floor

405 Martin Luther King Box 7

Georgetown, Texas 78626

Re: County payment to vendors under the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, and reimbursement to a county from the Texas Commission on Environmental Quality (RQ-0646-GA)

S U M M A R Y

Chapter 382 of the Health and Safety Code authorizes establishment of a Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program ("LIRAP") and directs the Texas Commission on Environmental Quality (the "TCEQ") to distribute available funds to participating counties to administer the program. Section 382.210(d) provides that a participating county "shall ensure that funds are transferred to a participating dealer . . . not later than five business days after the date the county receives" the required dealer documentation. TEX. HEALTH & SAFETY CODE ANN. §382.210(d) (Vernon Supp. 2007). But a participating county is not authorized to disburse funds to participating dealers under the LIRAP before such expenditures have been reviewed and approved by the county's auditor, commissioners court, and treasurer as required by Texas law. And the TCEQ is not prohibited from distributing available funds to a participating county when the required reviews and approvals by the county commissioner, county auditor, and county treasurer make county payments to LIRAP dealers within five days impractical.

Opinion No. GA-0625

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a Type A general-law city to permit employee payroll deduction as part of a collective bargaining agreement (RQ-0647-GA)

S U M M A R Y

The issue of payroll deduction of association dues is a mandatory subject of bargaining under the Fire and Police Employee Relations Act ("FPERA"), codified at chapter 174, Local Government Code. Thus, we conclude that a general-law municipality with a population of 10,000 or fewer and a duty to bargain collectively under section 174.105 of the FPERA has implied authority to provide payroll deductions for association dues.

Opinion No. GA-0626

Ms. Peggy D. Rudd

Director and Librarian

Texas State Library and Archives Commission

Post Office Box 12927

Austin, Texas 78711-2927

Re: Authority of a multi-jurisdictional library district to assess and collect ad valorem taxes (RQ-0648-GA)

S U M M A R Y

The Texas Supreme Court has not determined whether the Texas Constitution impliedly prohibits the Legislature from allowing a political subdivision to impose ad valorem taxes absent express constitutional authorization. However, the authority that exists indicates that a court would more likely than not find that express constitutional authority is necessary for legislation permitting a multi-jurisdictional library district established under Government Code chapter 336 to impose an ad valorem tax.

If the ad valorem tax authorized by Local Government Code chapter 336 were constitutional, the library district board could have the tax collector of the lead governmental entity collect and remit taxes to the district. Although section 336.251 limits the board's authority to negotiate the tax collector's compensation, it appears that the Legislature may amend this provision without also amending the constitution.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200802508
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 14, 2008

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING
SUBCHAPTER A. PROCEDURES FOR VENDOR PROTESTS OF PROCUREMENTS

1 TAC §69.1

The Office of the Attorney General (OAG) proposes an amendment to §69.1 concerning purpose and definitions. The proposal would update references to the former Texas Building and Procurement Commission by replacing them with references to the Comptroller of Public Accounts. These amendments are necessary due to enactment of House Bill 3560 during the 80th legislative session, which transferred the procurement functions of the former Texas Building and Procurement Commission under Government Code, Chapter 2155, Chapter 2156, Chapter 2157 and Chapter 2158 to the Comptroller of Public Accounts, effective September 1, 2007.

Dave Liebich, Assistant Division Director, Budget and Purchasing Division, has determined that for each of the first five years following the amendment of §69.1, the public benefit expected as a result of the amended rule is that any actual or prospective bidder, offeror, proposer, or contractor can refer to the rule to obtain accurate information regarding the procedures that are available for protests of procurements by the OAG.

Mr. Liebich has also determined that during the first five-year period following the amendment of §69.1, there will be no foreseeable fiscal implications for state or local government as a result of the amendment. Further, he has determined that for each of the first five years following the amendment of §69.1, there will be no economic cost to persons required to comply with the section, and therefore there is no need to consider less costly alternatives to the amendment. Finally, Mr. Liebich has determined that the amendment of §69.1 will have no adverse effect on small business or micro-business or local employment.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Dave Liebich, Assistant Division Director, Budget and Purchasing Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4509, dave.liebich@oag.state.tx.us.

The amendment to this rule is proposed in accordance with Government Code §2155.076, which requires state agencies to adopt procedures for resolving vendor protests.

The proposed amendment to this rule does not affect any other statutes.

§69.1. Purpose and Definitions.

(a) The purpose of this subchapter is to provide an internal protest procedure to be used by any actual or prospective bidder, offeror, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by the Office of the Attorney General from a delegated procurement. The following procedures are available for persons or firms not awarded the contract pursuant to authority delegated to the Office of the Attorney General by the Comptroller of Public Accounts [~~Texas Building and Procurement Commission~~] or by Government Code, Chapters 2155 - 2158. These procedures are consistent with the rules of the Comptroller of Public Accounts [~~Texas Building and Procurement Commission's rules~~] insofar as such rules are applicable to an internal agency review.

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Attorney General--the Office of the Attorney General;

(2) Manager--the Central Purchasing Manager of the Attorney General;

(3) First Assistant--the First Assistant Attorney General;

(4) Interested party--a vendor who has submitted a bid or proposal, as applicable, for the delegated procurement involved;

(5) Delegated procurement or procurement--a procurement delegated to the Attorney General pursuant to the procedures of Government Code, Chapter 2155, Chapter 2156, Chapter 2157, or Chapter 2158; and

(6) Receive/receipt--actual receipt.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802428
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: June 22, 2008
For information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

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SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §69.25

The Office of the Attorney General (OAG) proposes an amendment to §69.25 concerning Historically Underutilized Business Program. The proposal would update references to the former Texas Building and Procurement Commission by replacing them with references to the Comptroller of Public Accounts. These amendments are necessary due to enactment of House Bill 3560 during the 80th legislative session, which transferred the authority for administration of Government Code Chapter 2161, regarding Historically Underutilized Businesses, from the former Texas Building and Procurement Commission to the Comptroller of Public Accounts, effective September 1, 2007.

Dave Liebich, Assistant Division Director, Budget and Purchasing Division, has determined that for each of the first five years following the amendment of §69.25, the public benefit expected as a result of the amended rule is that it will provide accurate information to the public regarding the OAG's participation in the Historically Underutilized Business Program.

Mr. Liebich has also determined that during the first five-year period following the amendment of §69.25, there will be no foreseeable fiscal implications for state or local government as a result of the amendment. Further, he has determined that for each of the first five years following the amendment of §69.25, there will be no economic cost to persons required to comply with the section. Therefore there is no need to consider less costly alternatives to the amendment. Finally, Mr. Liebich has determined that the amendment of §69.25 will have no adverse effect on small business or micro-business or local employment.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Dave Liebich, Assistant Division Director, Budget and Purchasing Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4509, dave.liebich@oag.state.tx.us.

The proposed amendment to this rule is authorized in accordance with Government Code §2161.003, which requires state agencies to adopt the rules of the Comptroller of Public Accounts regarding Historically Underutilized Businesses under Government Code §2161.002 as its own.

The proposed amendment to this rule does not affect any other statutes.

§69.25. Historically Underutilized Business Program.

In accordance with Texas Government Code, §2161.003, the [~~The~~] OAG adopts by reference the Comptroller of Public Accounts' [~~Texas Building and Procurement Commission's (TBPC)~~] rules found at 34 TAC, Part 1 Comptroller of Public Accounts, Chapter 20 Texas Purchasing and Support Services, Subchapter B Historically Underutilized Business Program, §§20.11 - 20.28 [~~1 TAC, Title 1 Administration, Part 5 Texas Building and Procurement Commission , Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.28~~], relating to Historically Underutilized Business Program, with the following addition: For the purpose of Subchapter B, §69.25, "Commission" refers to the Comptroller of Public Accounts [~~Texas Building and Procurement Commission~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802429

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: June 22, 2008
For information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1189

The Texas Health and Human Services Commission (HHSC) proposes new §354.1189, concerning Acute Care Billing Coordination System.

Background and Justification

Section 2 of Senate Bill 10 (S.B. 10), 80th Legislature, Regular Session, 2007, amends Government Code, Chapter 531, Subchapter B, to add §531.02413, Billing Coordination System. Section 531.02413 requires HHSC to implement, if cost effective and feasible, an acute care Medicaid billing coordination system for the fee-for-service and primary care case management delivery models. When an acute care claim is billed to Medicaid, the billing coordination system would identify within 24 hours whether another entity has primary payor responsibility for paying the claim and submit the claim to that entity.

The proposed new rule provides for implementation of §531.02413. Based on responses to an RFI issued last fall, HHSC is coordinating with the Texas Medicaid & Healthcare Partnership to implement the billing coordination system.

Section-by-Section Summary

Proposed new §354.1189, requires HHSC to implement, if cost effective and feasible, an acute care Medicaid billing coordination system that would identify whether another entity has primary payor responsibility for Medicaid enrollees.

Proposed §354.1189(1) requires any entity that has a permit, license, or certificate of authority issued by a state regulatory agency to allow HHSC's contractor to access the entity's databases for the purposes of S.B. 10.

Proposed §354.1189(2) requires that HHSC refer any entity that violates this rule to the state regulatory agency issuing the permit, license, or certificate of authority for possible administrative sanction.

Proposed §354.1189(3) prohibits the expenditure of public funds, after September 1, 2008, on entities not in compliance with this section unless a memorandum of understanding is entered into between the entity and HHSC.

Proposed §354.1189(4) requires that information obtained under this section be secure and that the confidentiality of the client's health records be maintained in compliance with security and pri-

vacy rules adopted by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. §§164.302 - 164.318 and §§164.500 - 164.534.

Proposed §354.1189(5) specifies that the administrator of the acute care Medicaid billing coordination system shall be determined by HHSC and that the administrator shall be responsible for meeting all requirements of the acute care Medicaid billing coordination system.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that the fiscal impact over the next five years to state government cannot be determined. S.B. 10 requires HHSC to make a determination that the provision is cost-effective prior to implementation. Cost-effective generally means that the savings or revenues realized from the provision offset any cost incurred. This provision could result in additional savings to the state once implemented, but those savings cannot be determined at this time. The proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed new rule because they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed new rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed new rule is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, is that a process will be established that identifies whether another entity has primary responsibility for paying a claim that has been submitted to Medicaid for reimbursement and then ensures that the identified claim will be submitted to the appropriate entity for payment. As a result of this process, it is expected that Medicaid payments will be reduced, because the process will identify all other primary payors.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Clarice Cefai, Senior Policy Analyst, Medicaid/CHIP Division, Health and Human Services Commission at 4900 N. Lamar Boulevard, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 249-3707; or by e-mail to Clarice.Cefai@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for Thursday, June 19, 2008 at 10:00 a.m. to 12:00 p.m. in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Rene Williams at (512) 491-1162.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule affects Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1189. Acute Care Billing Coordination System.

This rule implements Government Code §531.02413, under which the Health and Human Services Commission (HHSC) will develop and implement an acute care Medicaid billing coordination system for the fee-for-service and primary care case management delivery models that identifies whether another entity has primary payor responsibility.

(1) An entity holding a permit, license, or certificate of authority issued by a state regulatory agency must allow HHSC or its designee to access databases that enable it to carry out the purposes of this section.

(2) HHSC will refer any entity that violates this rule to the regulatory agency issuing the permit, license, or certificate of authority for possible administrative sanction.

(3) After September 1, 2008, no public funds will be expended on entities not in compliance with this section unless a memorandum of understanding is entered into between the entity and the Commission.

(4) The administrator of the acute care Medicaid billing system must ensure the security of information obtained under this section and maintain the confidentiality of the client's health records in compliance with security and privacy rules adopted by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. §§164.302 - 164.318 and §§164.500 - 164.534.

(5) The administrator of the acute care Medicaid billing coordination system will be determined by HHSC. The administrator will be responsible for meeting all requirements of the acute care Medicaid billing coordination system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802441

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 424-6900

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1 TAC §354.1190

The Texas Health and Human Services Commission (HHSC) proposes new §354.1190, Medicaid Provider Database, in Chapter 354, Subchapter A, Division 11.

Background and Justification

Pursuant to H.B. 2042, 80th Legislature, Regular Session, 2007, HHSC proposes new §354.1190 to administer an electronic, searchable Internet-based database of all participating providers in the Texas Medicaid program. H.B. 2042 required HHSC to develop an electronic database of physicians, hospitals, and other health care providers participating in the state Medicaid program. HHSC had already developed a provider database that satisfies the requirements of H.B. 2042 pursuant to one of the requirements of the Frew Corrective Action Order. HHSC implemented this database on December 1, 2007.

This database will help Medicaid providers and recipients to determine which physicians and other providers participate in Medicaid, and of those who are, which are accepting new patients.

The online provider lookup is located on the Texas Medicaid and Healthcare Partnership (TMHP) web site at www.tmhp.com. HHSC has encouraged providers to update their information in numerous publications: *Texas Medicaid Bulletin*, No. 210, November/December 2007; *Texas Medicaid Bulletin*, No. 212, January/February 2008, pp. 6-7; Banner message 10/15/07: #8; Banner message 10/22/07: #10; Banner message 10/29/07: #16. In addition, a Web article appeared on the TMHP web site in October 2007.

Section-by-Section Summary

HHSC proposes new §354.1190, Medicaid Provider Database, to administer an electronic, searchable, Internet-based database of all participating providers in the Medicaid program. Participating providers include physicians and other health care providers who contract or otherwise agree with a managed care organization to provide Medicaid services. The new rule outlines all the characteristics of the database required by H.B. 2042, as follows:

The database must include each participating provider's name, specialty, location, office hours (including any office hours outside of regular business hours), and telephone number. The database also must include whether the provider is accepting new recipients, and if applicable, the managed care organization(s) or managed care plan(s) under which new recipients are being accepted, whether the provider has any practice limitations, including specific age range limitations, and if the provider speaks any languages other than English. The database must include a list of the Medicaid services offered by the provider and any waiver program or other program within the Medicaid program in which the provider is a participant, including the Texas Health Steps Program (THSteps).

In establishing the database, HHSC must ensure that the database allows a person to search a managed care organization by name and by participating provider within each of the managed care plans offered by that managed care organization. The database must also allow a participating provider to electronically access and change or update the information. The database must be available and accessible to each participating provider and each recipient.

HHSC must ensure that the database is updated continually and at least once a month. There may be no fees associated with accessing the information or for making information available on the provider database either directly or indirectly for either the provider or the recipient.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the new rule is in effect there will be no significant cost to state government. HHSC is required to establish a similar provider database under the Frew Corrective Action Order. That database was made available to the public December 2007. HHSC estimates that future enhancements to the database will not result in a significant cost to state government. The proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposed new rule, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed new rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed new rule will be improved access to and quality of health care services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

Public Comment

Written comments on the proposed new rule may be submitted to JoAnne Talavera, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, H390, Austin, Texas 78711; by fax to (512) 249-3725; or by e-mail to joanne.talavera@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for June 26, 2008, from 1:30 p.m. to 3:30 p.m. in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Rene Williams at (512) 491-1162.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1190. Medicaid Provider Database.

(a) The Medicaid Provider Database is an electronic, searchable, Internet-based database of all participating providers in the Medicaid program.

(1) Definitions

(A) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(B) "Health care provider" means a person, other than a physician, who:

(i) is licensed or otherwise authorized to provide a health care service in this state including:

(I) a pharmacist, dentist, optometrist, mental health counselor, social worker, advanced practice nurse, physician assistant, or durable medical equipment supplier; or

(II) a pharmacy, hospital, or other institution organization;

(ii) is wholly owned or controlled by:

(I) a health care provider or a group of health care providers described by clause (i) of this subparagraph;

(II) one or more hospitals and physicians, including a physician-hospital organization;

(iii) is a professional association of physicians organized under the Texas Professional Association Law, as described by §1.008, Business Organizations Code;

(iv) is an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(v) is a medical and dental unit, as defined by §61.003, Education code, a medical school, as defined by §61.501, Education Code, or a health science center described by Subchapter K, Chapter 74, Education Code, that employs or contracts with physicians to teach or provide medical services, or employs physicians and contracts with physicians in a practice plan; or

(vi) is another person wholly owned by physicians.

(C) "Managed care plan" has the meaning assigned by §533.001, Government Code.

(D) "Participating provider" means a physician or health care provider who provides Medicaid services, including a physician or health care provider who contracts or otherwise agrees with a managed care organization to provide Medicaid services.

(E) "Physician" means an individual licensed to practice medicine in this state.

(F) "Recipient" means a recipient of medical assistance.

(2) Required Elements.

(A) The database includes each participating provider's:

(i) name;

(ii) Specialty;

(iii) Location;

(iv) Office hours (including any office hours outside of regular business hours);

(v) Telephone number;

(vi) a list of the Medicaid services offered by the provider; and

(vii) any waiver program or other program within the Medicaid program in which the provider is a participant, including the Texas Health Steps Program (THSteps).

(B) The database includes whether the provider:

(i) is accepting new recipients, and if applicable, the managed care organization(s) or managed care plan(s) under which new recipients are being accepted;

(ii) has any practice limitations, including specific age range limitations; and

(iii) speaks any languages other than English.

(b) The database allows a person to search a managed care organization by name and by participating provider within each of the managed care plans offered by that managed care organization. The database also allows a participating provider to electronically assess and change or update his/her information.

(c) The database is available and accessible to each participating provider and each recipient.

(d) The database will be updated continually and at least once a month.

(e) There are no fees associated with accessing the information or for making information available on the provider database either directly or indirectly for either the provider or the recipient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 8, 2008.

TRD-200802426

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 424-6576

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §§355.307, 355.308, 355.311

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.307, Reimbursement Setting Methodology, §355.308, Direct Care Staff Rate Component and §355.311, Medicaid Reimbursement Rates for State Veterans Homes.

Background and Justification

These rules establish the reimbursement methodology for the Nursing Facility (NF) program, including Medicaid reimbursement rates for state veteran's homes. HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace the Texas Index for Level of Effort (TILE) case mix system with the Resource Utilization Groups (RUG) case mix system for purposes of NF reimbursement; establish a one-year hold-harmless transition from TILE to RUG; and remove outdated language.

The TILE system is based on data from 1987 and does not reflect changes in practice patterns and resident characteristics over the past 20 years. The RUG system is a case mix classification system that uses data from the federal minimum data set (MDS) form. The RUG system is periodically updated by the federal government. At present, RUG is based on data from 1995 and 1997, and the federal Centers for Medicare and Medicaid Services (CMS) is in the midst of a data collection that will further update the RUG model in the next few years.

House Bill 867, 74th Legislature, Regular Session, 1995, mandated the use of a single resident assessment instrument in NFs. Currently, Texas uses both the federally required MDS and the Texas Care Form 3652 for assessments. The Department of Aging and Disability Services (DADS) will eliminate the Texas CARE form 3652 and use the federal MDS in determination of Medical Necessity and reimbursement effective September 1, 2008. As a result, HHSC must convert the Texas Medicaid reimbursement methodology for NFs from the existing TILE case mix system to the RUG system using the MDS.

In addition, the amendments will allow payment rates for the pediatric care facility class to be determined annually on the state's fiscal year rather then biennially coincident with the state's biennium; and remove outdated language. The effect of this change will be to allow annual reviews of the costs of pediatric care facilities, which will allow rate adjustments to be made in a more timely fashion. Because there is currently only one facility in Texas that specializes in services for children and because children are such a fragile population, annual reviews of the facility's costs are required to ensure that the program is properly funded and to mitigate the inherent operating risks in such a program.

Section-by-Section Summary

The proposed amendments to §355.307 are as follows:

Revise subsection (a) to indicate that NF rates are determined for 34 case mix classes of service plus two default classifications.

Delete subsection (b)(1)(A)(i) and (ii) which are obsolete and incorporate non-obsolete language in clause (iii) into subparagraph (A).

Delete subsection (b)(1)(B)(i) and (ii) which are obsolete and incorporate non-obsolete language in clause (iii) into subparagraph (B).

Delete subsection (b)(1)(C)(i) and (ii) which are obsolete, incorporate non-obsolete language in clause (iii) into subparagraph (C) and renumber subsequent subclauses and items within subparagraph (C).

Revise subsection (b)(2) to replace references to TILE with references to RUG-III; define RUG as the Resource Utilization Group (RUG-III) 34 group classification system, Version 5.20, index maximizing, as established by the state and CMS; and replace references to case mix indices with references to CMS standard nursing time measurements for Registered Nurses (RNs), Licensed Vocational Nurses (LVNs) and aides (Medication Aides and Certified Nurse Aides).

Revise subsection (b)(3) to refer to RUG-III groups rather then 11 TILE groups.

Add a new subsection (b)(3)(A) to state that, for each RUG-III group, a total LVN-equivalent minute statistic is calculated by converting the CMS standard nursing time measurements for RNs, LVNs and aides into Texas-specific LVN-equivalent minutes as per §355.308(j), relating to Direct Care Staff Rate Component, and summing the converted figures; and renumber the subsequent subparagraphs.

Modify renumbered subsection (b)(3)(B) to refer to the determination of the statewide weighted average RUG-III total adjusted minutes rather than to the determination of the statewide average case mix.

Add a new subsection (b)(3)(B)(i) to state that the statewide weighted average RUG-III total adjusted minutes used in determination of rates effective September 1, 2008, will be based on statewide recipient days of service by case mix group from December 1, 2007, through February 29, 2008.

Add a new subsection (b)(3)(B)(ii) to state that the statewide weighted average RUG-III total adjusted minutes used in determination of rates effective September 1, 2009, will be based on statewide recipient days of service by case mix group from September 1, 2008, through February 28, 2009.

Add a new subsection (b)(3)(B)(iii) which states that the statewide weighted average RUG-III total adjusted minutes used in determination of rates effective September 1, 2010, and thereafter will be based on statewide recipient days of service by case mix group during the cost reporting period covered by the rate base.

Modify renumbered subsection (b)(3)(C) to state that the standardized statewide case mix index for each RUG-III group is determined by dividing each of the total LVN-equivalent minute statistics from subsection (b)(3)(A) by the statewide average total adjusted minutes from subsection (b)(3)(B).

Modify renumbered subsection (b)(3)(D) to delete clauses (i) and (ii), which are obsolete, and incorporate non-obsolete language in clause (iii) into subparagraph (D).

Modify renumbered subsection (b)(3)(D) to replace references to TILE with references to RUG-III and to update a reference to renumbered subsection (b)(3)(C).

Modify renumbered subsection (b)(3)(E) to replace references to TILE with references to RUG-III and to update references to renumbered subsection (b)(3)(D).

Modify renumbered subsection (b)(3)(F) to update references to renumbered subsection (b)(3)(E).

Modify renumbered subsection (b)(3)(F)(ii) to indicate that the ventilator-dependent resource differential case mix index for the other recipient care rate component is calculated by subtracting the standardized statewide case mix index for the SE1 RUG-III case mix group from 3.61.

Modify renumbered subsection (b)(3)(F)(ii) to indicate that the ventilator-dependent resource differential case mix index for the direct care staff base rate component is calculated by dividing the resource differential index for the other recipient care rate component by 0.9908.

Add a new subsection (b)(3)(F)(iii) which states that the ventilator per diem rate supplement is calculated by multiplying the resource differential indices for the other recipient care rate component and the direct care staff base rate component by the per diem average other recipient care rate component and direct care staff base rate component, respectively, and summing the products; and renumber the subsequent clauses.

Modify renumbered subsection (b)(3)(G) to update references to renumbered subsection (b)(3)(E).

Modify renumbered subsection (b)(3)(H) to update references to renumbered subsection (b)(3)(F) and (G).

Delete subsection (b)(4) as obsolete.

Modify subsection (c)(3)(A) to allow payment rates for the pediatric care facility class to be determined annually, coincident with the state's fiscal year, within available funds. Currently, the frequency of payment rate determination for this class is governed by §355.101(c)(1), relating to Reimbursement Rates Cost Determination Process Introduction, which requires that payment rates be determined coincident with the state's biennium.

Modify subsection (c)(3)(C) to replace references to TILE with references to RUG.

Delete subsection (f) as obsolete.

Add a new subsection (f) which describes the TILE to RUG-III hold harmless transition for state fiscal year 2009.

The proposed amendments to §355.308 are as follows:

Modify subsection (j)(1)(A)(ii) to replace references to TILE with references to RUG-III and to clarify that when referring to residents who qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care, the clause is referring to Medicaid residents.

Modify subsection (j)(1)(B) to replace references to TILE with references to RUG-III.

Modify subsection (j)(1)(C) to replace references to TILE with references to RUG-III.

Modify subsection (j)(1)(E) to replace references to TILE with references to RUG-III: replace a reference to TILE group 207 with a reference to RUG-III group PE1; and delete obsolete language.

Modify subsection (j)(1)(F) to replace references to TILE with references to RUG-III.

Modify subsection (j)(3)(A) to clarify that the subparagraph refers to Medicaid units of service rather then all units of service.

Modify subsection (k)(4) to indicate that it refers to rates effective September 1, 2009, and thereafter; to replace references to TILE with references to RUG-III; and to indicate that the direct care staff per diem base rate for each RUG-III group is equal to the average direct care staff base rate component times the RUG-III index for the group divided by 0.9908.

Modify subsection (k)(5) to delete obsolete language.

Modify subsection (bb) to replace references to TILE with references to RUG-III.

The proposed amendment to §355.111 modifies subsection (e) to replace references to a resident's TILE with references to a resident's case mix classification.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government of $54,677,783 for state fiscal year (SFY) 2009, $47,738,239 for SFY 2010, $47,913,960 for SFY 2011, $48,089,679 for SFY 2012, and $48,089,678 for SFY 2013. Of this fiscal impact, $7,220,803 for SFY 2009 is due to the TILE to RUG-III hold harmless transition. The remainder of the fiscal impact for SFY 2009 and all of the fiscal impact for SFY 2010 through 2013 is due to a SFY 2009 increase in nursing facility payment rates for those cost centers that vary according to case mix classification. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with these amendments. The amendments will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendments are in effect, the expected public benefit is that nursing facility case mix reimbursements will be based on a case mix classification system that reflects more current practice patterns which will, in turn, lead to a more equitable distribution of nursing facility payments across different types of residents. As well, payment rates for pediatric care facilities will more closely track the operating expenses of such facilities, thereby reducing the risk of rates overpaying these facilities in some years and underpaying them in other years; and obsolete rule language will be eliminated.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 10, 2008, at 9:00 a.m. to receive public comment on these proposed amendments.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendments affect Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.307. Reimbursement Setting Methodology.

(a) Case mix classes. The Texas Health and Human Services Commission (HHSC) reimbursement rates for nursing facilities (NFs) vary according to the assessed characteristics of the recipient. Rates are determined for 34 [~~11~~] case mix classes of service, plus a 35th [~~12th~~], temporary classification assigned by default when assessment data are incomplete or in error and a 36th classification assigned by default when an assessment is missing.

(b) Reimbursement determination. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Rate Components. Under the case mix methodology, reimbursements are comprised of five cost-related components: the direct care staff component; the other recipient care component; the dietary component; the general/administration component; and the fixed capital asset component. The direct care staff component is calculated as specified in §355.308 of this title (relating to Direct Care Staff Rate Component).

(A) The dietary rate component is constant across all case mix classes[~~.~~]

[(i) ~~For rates effective May 1, 2000, using the inflation factors used in determination of the nursing facility rates in effect January 1, 2000, project the costs in the 1998 Texas Nursing Facility Cost Report data base to the rate period beginning January 1, 2000, and ending August 31, 2000. Using these projected costs, determine the median per diem dietary cost (weighted by Medicaid days of service in the data base) in the array of allowable per diem costs for all contracted nursing facilities included in the January 1, 2000, data base, multiplied by 1.07.~~]

[(ii) ~~For rates effective September 1, 2000, multiply the dietary per diem rate from clause (i) of this subparagraph by 1.016.~~]

[(iii) ~~For rates effective September 1, 2001, and thereafter, the dietary component~~] and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(B) The general/administration rate component is constant across all case mix classes[~~.~~]

[(i) ~~For rates effective May 1, 2000, the general/administration rate component is equal to the difference between the general, administration, and dietary rate component in effect January 1, 2000, and the dietary rate component as calculated in subparagraph (A)(i) of this paragraph.~~]

[(ii) ~~For rates effective September 1, 2000, multiply the general/administration per diem rate from clause (i) of this subparagraph by 1.016.~~]

[(iii) ~~For rates effective September 1, 2001, and thereafter, the general/administration component~~] and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(C) The fixed capital asset component is constant across all case mix classes[~~.~~]

[(i) ~~For rates effective May 1, 2000, the fixed capital asset component is equal to the fixed capital asset component in effect January 1, 2000.~~]

[(ii) ~~For rates effective September 1, 2000, the fixed capital asset component is equal to the fixed capital asset component from clause (i) of this subparagraph multiplied by 1.016.~~]

[(iii) ~~For rates effective September 1, 2001 and thereafter, the fixed capital asset component~~] and is calculated as follows:

(i) [~~(I)~~] Determine the 80th percentile in the array of allowable appraised property values per licensed bed, including land

and improvements Appraised values for this purpose are determined as follows:

(I) [~~(-a-)~~] For proprietary facilities, tax exempt facilities provided an appraisal from their local property taxing authority, and tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined as described in §355.306(g) of this title (relating to Cost Finding Methodology).

(II) [~~(-b-)~~] For tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is not in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined by indexing the facility's allowable appraised value as determined in §355.306(g) of this title (relating to Cost Finding Methodology) to the median increase in appraised values among contracted facilities in the state as a whole from the reporting period coinciding with the first year of the facility's five-year interval to the reporting period upon which reimbursements are to be based.

(III) [~~(-c-)~~] Those facilities that do not report an allowable appraised value as described in §355.306(g) of this title (relating to Cost Finding Methodology) are not included in the array for purposes of calculating the use fee.

(ii) [~~(II)~~] Project the 80th percentile of appraised property values per bed by one-half the forecasted increase in the personal consumption expenditures (PCE) chain-type price index from the cost reporting year to the rate year.

(iii) [~~(III)~~] Calculate an annual use fee per bed as the projected 80th percentile of appraised property values per bed times an annual use rate of 14%.

(iv) [~~(IV)~~] Calculate a per diem use fee per bed by dividing the annual use fee per bed by annual days of service per bed at the higher of 85% occupancy, or the statewide average occupancy rate during the cost reporting period.

(v) [~~(V)~~] The use fee is limited to the lesser of the fee as calculated in clauses (i) - (iv) [~~subclauses (I) - (IV)~~] of this subparagraph [~~clause~~], or the fee as calculated by inflating the fee from the previous rate period by the forecasted rate of change in the PCE chain-type price index.

(2) Case mix classification system. All Medicaid recipients are classified according to the Resource Utilization Group (RUG-III) 34 group [~~Texas Index for Level of Effort (TILE)~~] classification system, Version 520, index maximizing, as established by the state and the Centers for Medicare and Medicaid Services (CMS). [~~described in §371.212 of this title (relating to Case Mix Classification System). The TILE classification system includes four clinical categories, which are further subdivided on the basis of an activity of daily living (ADL) scale, resulting in a total of 11 TILE case mix groups. A 12th group is used by default when a recipient's case-mix group membership is indeterminate because of assessment errors or omissions.~~] Each of the [~~12~~] case-mix groups, including the default groups [~~group~~], is assigned CMS standard nursing time measurements for Registered Nurses (RNs), Licensed Vocational Nurses (LVNs) and aides (Medication Aides and Certified Nurse Aides) [~~a case-mix index of effort~~]. These measurements indicate the [~~This index indicates the relative~~] amount of staff time required on average to deliver care to residents [~~recipients~~] in that group. [~~The case-mix index for each of the 11 TILE groups is determined through statistical and clinical analyses of recipient resource utilization data previously collected in Texas NFs. The lowest index for the 11 TILE groups is used as the case-mix index for the default group.~~]

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the RUG-III [~~11 TILE~~] groups and for the default groups [~~group~~] according to the following procedures:

(A) For each RUG-III group, calculate a total LVN-equivalent minute statistic by converting the CMS standard nursing time measurements for RNs, LVNs and aides into Texas-specific LVN-equivalent minutes as per §355.308(j) of this title (relating to Direct Care Staff Rate Component) and summing the converted figures.

(B) [~~(A)~~] [~~Determine the statewide average case mix index for all Medicaid recipients, except those in the default group.~~] Weight the total LVN-equivalent minute statistics [~~indexes~~] from subparagraph (A) [~~paragraph (2)~~] of this paragraph for each RUG-III group except the default groups as follows and determine the statewide weighted average total adjusted minutes: [~~subsection, which are based on a sample of nursing facilities, by the estimated statewide recipient days of service by case mix group during the cost reporting period covered by the rate base and determine the weighted average. The statewide average index is based on the most recent and complete data available indicating recipient days of service by case mix group that correspond to the period covered by the cost reports included in the rate base.~~]

(i) For rates effective September 1, 2008, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of December, 2007 and ending the last day of February, 2008.

(ii) For rates effective September 1, 2009, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September, 2008 and ending the last day of February, 2009.

(iii) For rates effective September 1, 2010 and thereafter, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the cost reporting period covered by the rate base.

(C) [~~(B)~~] Determine the standardized statewide case mix index for each of the RUG-III [~~11 TILE~~] groups by dividing each of the total LVN-equivalent minute statistics [~~indexes~~] described under subparagraph (A) [~~paragraph (2)~~] of this paragraph [~~subsection~~] by the statewide weighted average total adjusted minutes [~~case mix index~~] described under subparagraph (B) [~~(A)~~] of this paragraph.

(D) [~~(C)~~] The other recipient care rate component varies according to case mix class of service[.]

[(i) ~~For rates effective May 1, 2000, using the inflation factors used in determination of the nursing facility rates in effect January 1, 2000, project the costs in the 1998 Texas Nursing Facility Cost Report data base to the rate period beginning January 1, 2000, and ending August 31, 2000. Using these projected costs, determine the sum of other recipient care costs in all nursing facilities included in the 1998 data base. Then divide the total by the sum of recipient days of service in all facilities in the 1998 data base. Multiply the resulting weighted, average per diem cost of other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the 11 TILE case mix groups and for the default group, multiply each of~~

~~the standardized statewide case mix indexes used in determination of the nursing facility rates in effect January 1, 2000, by the average other recipient care rate component.~~]

[(ii) ~~For rates effective September 1, 2000, multiply the average other recipient care per diem rate from clause (i) of this subparagraph by 1.016. To calculate the other recipient care per diem rate component for each of the 11 TILE case mix groups and for the default group, multiply each of the standardized statewide case mix indexes used in determination of the nursing facility rates in effect January 1, 2000, by the average other recipient care rate component.~~]

[(iii) ~~For rates effective September 1, 2001, and thereafter, the average other recipient care rate component~~] and is calculated as follows. Adjust the raw sum of other recipient care costs in all nursing facilities included in the rate base in order to account for disallowed costs and inflation, as specified in §355.306 of this title (relating to Cost Finding Methodology). Then divide the adjusted total by the sum of recipient days of service in all facilities in the current rate base. Multiply the resulting weighted, average per diem cost of other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the RUG-III [~~11 TILE~~] case mix groups and for the default groups, multiply each of the standardized statewide case mix indexes from subparagraph (C) [~~(B)~~] of this paragraph by the average other recipient care rate component.

(E) [~~(D)~~] Total case mix per diem rates vary according to case mix class of service and according to participant status in Direct Care Staff Rate enhancements described in §355.308 of this title (relating to Direct Care Staff Rate Component).

(i) For each participating facility, for each of the RUG-III [~~11 TILE~~] case mix groups and for the default groups [~~group~~], the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) [~~(C)~~] of this paragraph; and

(V) the case mix group's total direct care staff rate component for that participating facility as determined in §355.308(l) of this title (relating to Direct Care Staff Rate Component).

(ii) For nonparticipating facilities, for each of the RUG-III [~~11 TILE~~] case mix groups and for the default groups [~~group~~], the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) [~~(C)~~] of this paragraph; and

(V) the case mix group's total direct care staff base rate component as determined in §355.308(k) of this title (relating to Direct Care Staff Rate Component).

(F) [~~(E)~~] Qualifying ventilator-dependent residents may receive a supplement to the per diem rate specified in subparagraph (E) [~~(D)~~] of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must require artificial ventilation for at least six consecutive hours daily and the use must be prescribed by a licensed physician.

(ii) A ventilator-dependent resource differential case mix index for the other recipient care rate component is calculated by subtracting the standardized statewide case mix index for the SE1 RUG-III case mix group from subparagraph (C) of this paragraph from 3.61. A ventilator-dependent resource differential case mix index for the direct care staff base rate component is calculated by dividing the resource differential case mix index for the other recipient care rate component by 0.9908 [~~, based on time-study research data. This resource differential index reflects the difference between direct nursing services for ventilator-dependent residents and services for residents in the most severe heavy-care TILE group~~].

(iii) The per diem rate supplement is calculated by multiplying the resource differential case mix index for the other recipient care rate component times the per diem average other recipient care rate component, as described in subparagraph (D) [~~(C)~~] of this paragraph and multiplying the resource differential case mix index for the direct care staff base rate component by the average direct care staff base rate component as described in §355.308(k) of this title (relating to Direct Care Staff Rate) and summing the products.

(iv) [~~(iii)~~] The supplemental reimbursement for residents requiring continuous artificial ventilation is 100% of the per diem ventilator rate supplement.

(v) [~~(iv)~~] The supplemental reimbursement for residents not requiring continuous artificial ventilation daily but requiring artificial ventilation for at least six consecutive hours daily is 40% of the per diem ventilator rate supplement.

(G) [~~(F)~~] Qualifying children with tracheostomies requiring daily care may receive a supplement to the per diem rate specified in subparagraph (E) [~~(D)~~] of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must be less than 22 years of age; require daily cleansing, dressing, and suctioning of a tracheostomy; and be unable to do self care. The daily care of the tracheostomy must be prescribed by a licensed physician.

(ii) The supplemental reimbursement for children receiving daily tracheostomy care is 60% of the per diem ventilator rate supplement as specified in subparagraph (F) [~~(E)~~] of this paragraph.

(H) [~~(G)~~] Children with qualifying conditions as specified in subparagraphs [~~(E) and~~] (F) and (G) of this paragraph may receive only one of the supplemental reimbursements. Therefore, children with tracheostomies who are also ventilator-dependent are not eligible to receive both supplemental reimbursements.

[~~(4) Case mix classification effective periods. The effective periods of case mix classifications are defined as follows.~~]

[~~(A) A recipient's case mix classification and associated per diem rate payment remain in effect until the recipient's next required assessment, unless one of the following events takes place:~~]

[(i) ~~a provider submits an off-cycle assessment as specified in 1 TAC §371.2412(a)(5) (relating to Texas Index for Level of Effort (TILE) Assessments);~~]

[(ii) ~~an HHSC nurse reviewer revises the recipient's assessment and TILE classification under the provisions of 1 TAC §371.2412(b) (Texas Index for Level of Effort (TILE) Assessments); or~~]

[(iii) ~~the recipient is discharged from the Medicaid nursing facility vendor payment system for more than 30 days prior to receiving a permanent medical necessity determination.~~]

[~~(B) The case mix classification and associated per diem payment rate of a recipient in the default group are changed retroactively when the provider furnishes HHSC with corrected data that permit classification in one of the 11 TILE case mix groups.~~]

(c) Special reimbursement class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers.

(1) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility or distinct unit of a nursing facility that serves predominantly children.

(2) Definitions.

(A) Pediatric care facility--A pediatric care facility is an entire facility that has maintained an average daily census of 80% or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85% or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80% or more children if the pediatric care facility is an entire facility and 85% or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission.

(B) Distinct unit--A portion of a nursing facility that is physically separate from (beds are not commingled with) other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must consist of 28 or more Medicaid-contracted beds.

(C) Children--For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(3) Payment rate determination. Payment rates will be determined in the following manner:

(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process) except that payment rates are determined annually, coincident with the state's fiscal year, within available funds. A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the pediatric care facility distinct unit and one report for the remainder of the facility.

(B) Payment rates for this class of service will be determined on a facility-specific basis for the pediatric care facility. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85% of contracted capacity of the pediatric care facility. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility-specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by HHSC.

(C) The facility-specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility regardless of the RUG [~~TILE~~] level of the resident.

(D) Residents of the pediatric care facility will not be eligible to receive the ventilator-dependent or the children-with-tracheostomies supplemental reimbursements.

(E) Pediatric care facilities are not eligible to participate in §355.308 of this title (relating to Enhanced Direct Care Staff Rate).

(d) Nurse aide training and competency evaluation costs.

(1) DADS reimburses nursing facilities for the actual costs of training and testing nurse aides as required under the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Payments are based on cost reimbursement vouchers that are to be submitted quarterly. Allowable costs are limited to those costs incurred for training provided after October 1, 1990, for:

(A) actual training course expenses up to a set amount determined by DADS per nurse aide;

(B) competency evaluation; or

(C) supplies and materials used in the nurse aide training not already covered by the training course fee.

(2) Nurse aide salaries while in training are factored into the vendor rate and are not to be included on the reimbursement voucher.

(3) Training program costs that exceed the DADS cost ceiling must have prior approval from DADS before costs can be reimbursed. A written request to Provider Billing Services must include:

(A) name and vendor number of facility.

(B) description of training program for which the facility is seeking reimbursement approval, to include:

(i) name, telephone number and address of the nurse aide training and competency evaluation program (NATCEP);

(ii) whether the NATCEP program is facility or non-facility-based; and

(iii) name of the NATCEP program director.

(C) an explanation of why the cost for the NATCEP exceeds the reimbursement ceiling. The explanation must include:

(i) a completed nurse aide unit cost calculation form for a facility-based NATCEP; or

(ii) a breakdown of the nurse aide unit cost by the instructor fees and training materials for a non-facility-based NATCEP.

(D) an explanation of why the nursing facility cannot utilize a training program at or below the reimbursement ceiling and what steps the facility has taken to explore more cost efficient training courses. The explanation must include:

(i) the availability of NATCEPs, such as the location or the frequency of training offered, in the geographic region of the facility;

(ii) the name and address of each NATCEP that the facility has explored as a provider of nurse aide training; and

(iii) the cost per nurse aide for each NATCEP identified in clause (i) of this subparagraph, as specified in subparagraph (C)(i) or (ii) of this paragraph.

(4) All prior approval requests as outlined in paragraph (3) of this subsection must be submitted to DADS, Provider Billing Services that:

(A) may request additional information in order to evaluate a reimbursement request; and

(B) will make the final decision on a reimbursement request.

(5) All nurse aide training courses must be approved by DADS before costs associated with them can be reimbursed.

(6) Nursing facilities are responsible for tracking and documenting nurse aide training costs for each nurse aide trained. All documentation is subject to DADS audits. If substantiating documentation for amounts billed to DADS cannot be verified, DADS will immediately recoup funds paid to the facility.

(7) Individuals who have successfully completed a nurse aide training and competency evaluation program (NATCEP) may be directly reimbursed for costs incurred in completing a NATCEP. The individual must meet all of the conditions specified in subparagraphs (A) - (E) of this paragraph.

(A) The individual must not have been employed at the time of completing the NATCEP.

(B) The individual must have been employed by, or received an offer of employment from, a nursing facility not later than 12 months after successfully completing the NATCEP.

(C) The individual must have been employed by the facility for no less than six months.

(D) The nursing facility must not have claimed reimbursement for training expenses for the individual.

(E) The individual must be listed on the current Nurse Aide Registry.

(8) Individuals must submit cost reimbursement vouchers to DADS with proof that the individual has been employed by a facility for no less than six months.

(9) Individuals who leave nursing facility employment before accruing the required six months of employment, as specified in paragraph (7)(C) of this subsection, may receive 50% reimbursement as long as the individual was employed for no less than three months.

(10) Reimbursement to individuals may not exceed the reimbursement ceiling as detailed in paragraph (1)(A) of this subsection.

(e) Oxygen costs. Oxygen costs incurred on or after January 1, 1995, will not be reimbursed on cost reimbursement vouchers. Those oxygen costs must be reported as expenses on the cost report.

(f) TILE to RUG-III Hold Harmless Transition. For rates effective September 1, 2008, payment rates for the direct care staff component and the other recipient care component only will be updated within available funds.

(1) To calculate the updated direct care staff per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 0.9908, which is the weighted average TILE case mix index for the 1998 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated direct care staff rate component.

(2) To calculate the updated other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 1.0267, which is the weighted average TILE case mix index for the 2005 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated other recipient care rate component.

(3) For state fiscal year 2009 only, for each Medicaid-contracted nursing facility, HHSC will:

(A) Calculate the sum of the weighted average TILE direct care staff base rate (with no enhancements) and other recipient care rate based on the TILE rates for these cost areas in effect on August 31, 2008 and the facility's approved to be paid days of service by TILE from January 1, 2008 through June 30, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around November 3, 2008.

(B) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around July 1, 2009.

(C) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (B) of this paragraph. If the sum from subparagraph (A) is greater then the sum from subparagraph (B), DADS will pay the facility the difference between the sum from subparagraph (A) and the sum from subparagraph (B) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around July 1, 2009.

(D) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around January 4, 2010.

(E) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (D) of this paragraph. If sum from subparagraph (A) is greater then the sum from subparagraph (D),

DADS will pay the facility the difference between the sum from subparagraph (A) and the sum from subparagraph (D) times the facility's approved to be paid days of service for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around January 4, 2010.

(4) "On or around" as used in this subsection means the date that the state pulls the information as described in the subsection as close to the dates specified in subsection as feasible and determined by the state. Once the state does the data pull, no other pulls will be made for the purpose of calculating the values described in this subsection. This means that once the paid days of service for a paragraph have been determined for purposes of calculating the TILE to RUG-III hold harmless transition, they will not be updated for late Minimum Data Set (MDS) submissions, Utilization Review RUG-III changes, retroactive eligibility or any other reason.

[~~(f) For rates effective September 1, 2003 and September 1, 2004, the rates for the dietary rate component from subsection (b)(1)(A) of this section, the general/administration rate component from subsection (b)(1)(B) of this section, fixed capital asset component from subsection (b)(1)(C) of this section, the other recipient care rate component from subsection (b)(3)(C) of this section, the supplement to per diem rates for qualified ventilator-dependent residents from subsection (b)(3)(E) of this section, the supplement to per diem rates for qualified children with tracheostomies from subsection (b)(3)(F) of this section and the pediatric care facility rate from subsection (c) of this section will be equal to the rates in effect August 31, 2003 adjusted as necessary to remain within appropriations. Adjustments necessary to remain within appropriations will apply equally in percentage terms across each component of the nursing facility rate and each add-on.~~]

§355.308. Direct Care Staff Rate Component.

(a) - (i) (No change.)

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from this subparagraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Resource Utilization Group (RUG-III) [~~Texas Index for Level of Effort (TILE)~~] case mix group and additional minimum required minutes for Medicaid residents reimbursed under the RUG-III [~~TILE~~] system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from this subparagraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by RUG-III [~~TILE~~] group, days of service provided to Medicaid [~~TILE~~] residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each RUG-III [~~TILE~~] group and supplemental [~~TILE~~] reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each RUG-III [~~TILE~~] group and supplemental [~~TILE~~] reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Divide [~~Effective for reporting periods beginning on or after September 1, 2001, divide~~] the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid RUG-III [~~TILE~~] recipient who also qualifies for a supplemental [~~TILE~~] reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a RUG-III PE1 [~~TILE 207~~] and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid [~~TILE~~] recipient who also qualifies for a supplemental [~~TILE~~] reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(2) Enhanced staffing levels. Facilities desiring to participate in the enhanced direct care staff rate are required to staff above the minimum requirements from paragraph (1) of this subsection. These facilities may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment under subsection (d) of this section.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (i) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (ee) of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option, and multiplies

this number by the rate add-on associated with that enhancement option as determined in subsection (l) of this section.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(k) Determination of direct care staff base rate.

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.

(4) For rates effective September 1, 2009 and thereafter, to [~~To~~] calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III [~~11 TILE~~] case mix groups and for the default groups, divide each RUG-III index from §355.307(3)(C) of this title (relating to Reimbursement Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection. [~~group, multiply each of the standardized statewide case mix indices associated with the initial database by the average direct care staff base rate component from paragraph (3) of this subsection.~~]

(5) The direct care staff per diem base rates will remain constant except for adjustments for inflation from paragraph (2) of this subsection. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). [~~For rates effective September 1, 2003 and September 1, 2004, the direct care staff per diem base rate will be equal to the direct care staff rate for participating facilities associated with maintaining LVN equivalent minutes at the minimum levels required for participation in effect August 31, 2003 adjusted as necessary to remain within appropriations. Adjustments necessary to remain within appropriations will apply equally in percentage terms across each component of the nursing facility rate and each add-on.~~]

(l) - (aa) (No change.)

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 40 TAC §19.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee makes payment to the hospital using the same procedures, the same case-mix methodology, and the same RUG-III [~~TILE~~] rates that HHSC authorizes for reimbursing NFs receiving the direct care staff base rate with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) - (ee) (No change.)

§355.311. Medicaid Reimbursement Rates for State Veterans Homes.

(a) - (d) (No change.)

(e) The facility-specific payment rate, as determined in subsection (d) of this section, will be paid for all Medicaid eligible residents of a state veterans home regardless of the case mix classification [~~Texas Index for Level of Effort (TILE) level~~] of the resident.

(f) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802442
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §226.4, §226.6

The Prescribed Burning Board (the board) proposes amendments to Chapter 226, §226.4, concerning insurance requirements for certification, and §226.6, concerning conducting a prescribed burn during a gubernatorial proclamation or presidential declaration. The amendments to §226.4 are proposed to formalize the various policies related to insurance standards that the Texas Department of Agriculture (the department), which serves as administrator of the board's prescribed burn manager certification program, already has used in considering applications for certified prescribed burn managers. Proposed amendments to §226.4 specify that required insurance cannot include specific exclusions for damage potentially caused by conducting prescribed burning activities. The proposed amendments also include a provision allowing the board to develop and approve a form to be completed by an authorized agent of insurer, certifying the coverage complies with requirements of the rule, and requiring an insurer to notify the department of any change or cancellation in insurance policy coverage. The amendments to §226.6 are proposed to clarify the responsibilities of a certified prescribed burn manager during county burn bans and upon the issuance of a declaration of emergency or disaster and make the rule consistent with current practice.

Jimmy Bush, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the amended sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the amended sections. The existing board rules are not being substantively changed; therefore, there will be no additional fees or requirements different from those previously existing.

Mr. Bush also has determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be a more formalized procedure for applicants and their insurance companies to provide information about insurance coverage. There will be no cost to micro-businesses, small businesses or individuals required to comply with the proposed amendments.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §226.4 and §226.6 are proposed under §153.041 of the Natural Resources Code, which authorizes the board to be established within the department and to administer the prescribed burn manager certification program; §153.047, which authorizes the board to adopt standards for prescribed burning.

The code that will be affected by this proposal is the Natural Resources Code, Chapter 153.

§226.4. Insurance Requirements.

(a) The certified prescribed burn manager conducting a prescribed burn shall carry or be covered by:

(1) at least $1 million of liability insurance coverage for each single occurrence of bodily injury to or destruction of property, [~~; and~~]

[~~(2)~~] with a policy period minimum aggregate limit of at least $2 million; and[~~.~~]

(2) without exclusion or limitation of coverage for any damage caused by the activity of prescribed burning by the insured.

(b) The Board may accept as proof of acceptable insurance an attestation by an authorized agent of an insurer, made on a Board approved form, certifying that an applicant or certified prescribed burn manager has been issued a policy of insurance that complies with the requirements of subsection (a)(1) and (2) of this section.

(c) The insurer of a certified prescribed burn manager shall notify the Board (TDA Licensing Division) of any cancellation or changes to the policy.

§226.6. Requirements for Certified Prescribed Burn Managers Conducting Burns During a County Burn Ban.

(a) All TCEQ, state and local requirements for open burning shall apply at all times[~~, including local permitting requirements for burning during a county burn ban~~].

(b) No certified prescribed burn manager may conduct a burn in a county in which [~~No burning shall be allowed if~~] a current Governor's and/or Presidential Declaration of Emergency or Disaster [~~for fire~~] is in effect that expressly prohibits all outdoor burning[~~in the county where the exemption is sought~~].

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802446
Dolores Alvarado Hibbs
General Counsel
Prescribed Burning Board
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.6

The Texas Higher Education Coordinating Board proposes an amendment to §5.6 concerning the Common Admission Application. Specifically, the proposed amendment to §5.6(f) would delete the statement that the Coordinating Board may, by contract, implement a reduced rate for participating community colleges. With the passage of Senate Bill 502, 79th Texas Legislature, any institution of higher education that admits freshman-level or undergraduate transfer students, other than general academic teaching institutions, is now legislatively mandated to accept the common admission application. Therefore, no community college must contract to use the form. Community colleges are required to accept the form and all participating institutions share in the cost of the system.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the sections will be clarification of the shared cost of the common application system by participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §51.762, which provides the Coordinating Board with the authority to adopt rules for the common admission application.

The amendment affects §51.762.

§5.6. Common Admission Application.

(a) - (e) (No change.)

(f) The Coordinating Board shall enter into a contract with a public institution of higher education to maintain the electronic common application system for use by the public in applying for admission to participating institutions and for distribution of the electronic application to the participating institutions designated by the applicant. Operating costs of the system will be paid for by all institutions required to use the common application plus those institutions that have contracted for use of the electronic application. Each participating institution will pay a portion of the cost based on the percentage of its enrollment compared to the total enrollment of all participating institutions based on the previous year's certified enrollment data. [~~However, the Coordinating Board may, by contract, implement a reduced rate for participating community colleges.~~] The Coordinating Board will monitor the cost of the system and notify the institutions on an annual basis of their share of the cost. Billings for the services for the coming year will be calculated and sent to the institutions in March and payments must be received by September 15.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802450
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 24, 2008
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER DD. CRIMINAL HISTORY RECORD INFORMATION REVIEW

19 TAC §153.1101, §153.1117

The Texas Education Agency (TEA) proposes an amendment to §153.1101 and new §153.1117, concerning criminal history record information review. Section 153.1101 establishes definitions for applicable words and terms. The proposed rule actions would implement the requirements of the Texas Education Code (TEC), §22.0834, as added by Senate Bill 9, 80th Texas Legislature, 2007, which requires the criminal history record information review of certain contract employees of a school district, open-enrollment charter school, and shared services arrangement.

TEC, §22.0834, authorizes the commissioner of education to adopt rules as necessary to implement the criminal history record information review of certain contract employees. The statute requires entities that contract with public schools to obtain criminal history record information for their employees who have continuing contract duties and direct contact with students, but it does not define those terms. In addition, the statute does not address other issues related to what types of contracts and contractors are covered by its requirements.

Due to the uncertainty as to the application and interpretation of the TEC, §22.0834, a stakeholder meeting was held by TEA staff on February 25, 2008, to discuss the possibility of adopting commissioner's rules to help implement this section. Interested individuals and representatives of associations of construction contractors and subcontractors, school boards, school administrators, school personnel administrators, sports officials, educators, the University Interscholastic League, and other extracurricular organizations appeared and presented comments regarding the potential effects of failing to address the uncertainty regarding the implementation of the TEC, §22.0834. The stakeholders also proposed possible rule language. Although the specific rule proposals differed in some respects, the consensus of the meeting was that a commissioner's rule to help implement the TEC, §22.0834, is desperately needed.

The proposed amendment to 19 TAC §157.1101, Definitions, would add definitions for "continuing duties related to contracted services," "date of employment," "date of securing services," "direct contact with students," and "service contractor." The proposed amendment would also state more specifically the criteria for determining which employees and contractors are covered.

Proposed new 19 TAC §157.1117, School Contractor Employees, would describe in more detail the obligations and responsibilities of school contractors and school entities to obtain the required criminal history record information.

The proposed rule actions will not have any TEA reporting requirements, as the TEA will not receive or review the required criminal history record information. The TEC, §22.0834, already requires school districts and school contractors to obtain this information and requires the Texas Department of Public Safety to report that which is national criminal history record information through a clearinghouse. The proposed rule actions will not add any additional procedural or reporting requirements and will, in fact, reduce those requirements by clarifying which school contractors are not subject to a criminal history record information review.

The proposed rule actions will not add any additional locally maintained paperwork requirements and should actually decrease procedural and reporting requirements as previously described.

Karen Loonam, deputy associate commissioner for educator certification and standards, has determined that for the first five-year period the amendment and new section are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment and new section because the obligation to obtain the required criminal history record information was imposed by the TEC, §22.0834, not by the proposed rules. The proposal will reduce the fiscal impact on schools and school contractors by clarifying which school contractors are not subject to a criminal history record information review. The TEA will not incur any costs as a result of the proposed rule actions because neither the rules nor the statute requires the TEA to receive or review any of the information that the TEC, §22.0834, requires schools and school contractors to obtain.

Dr. Loonam has determined that for each year of the first five years the amendment and new section are in effect the public

benefit anticipated as a result of enforcing the amendment and new section will be implementation of the legislative mandate to obtain national criminal histories on covered school contractor employees, resulting in a safer school environment for both students and educators. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. Although many of the school contractors who would be affected by the proposed rule actions are individuals, they would be acting as independent contractors if they are covered by the TEC, §22.0834, so their savings are addressed with savings estimated for microbusinesses.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. The legislature has determined that the information required by the TEC, §22.0834, is necessary for the health, safety, and welfare of the state. However, if these proposed rule actions are not adopted, it is probable that school districts and school contractors, many of whom are small businesses or microbusinesses, will incur unnecessary fiscal costs because of the current uncertainty as to the application and interpretation of the TEC, §22.0834. The proposed rule actions will minimize the impact on small businesses and microbusinesses to as great an extent as possible consistent with the legislative intent to require that criminal history record information be obtained on all school contractor employees who, as a result of their contract services, may have the opportunity for unsupervised contact with students.

It is difficult to calculate the economic savings that will result from the proposed rule actions, but it is estimated that as many as 20,000 to 30,000 sports officials, University Interscholastic League judges, and other school contractors who do not have unsupervised interaction with students in the performance for their contract services will not be required to obtain national criminal history record information. The cost of these searches would have had to be paid either by school districts or small businesses and/or microbusinesses. The total estimated costs for criminal history record information reviews for these "non-covered" contract employees would be $600,000 for fiscal year 2009 and $200,000 each year for fiscal years 2010-2013 for an estimated total savings of $1.4 million over the next five fiscal years.

The public comment period on the proposal begins May 23, 2008, and ends June 22, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on May 23, 2008.

The amendment and new section are proposed under the Texas Education Code, §22.0834, as added by Senate Bill 9, 80th Texas Legislature, 2007, which authorizes the commissioner to adopt rules as necessary to implement criminal history record information review of certain contract employees.

The amendment and new section implement the Texas Education Code, §22.0834.

§153.1101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Clearinghouse--The criminal history clearinghouse established by the Texas Department of Public Safety (DPS) pursuant to the Texas Government Code, §411.0845.

(2) Continuing duties related to contracted services--Work duties that are performed pursuant to a contract to provide services to a school entity on a regular, repeated basis rather than infrequently or one-time only.

(3) Covered contract employee--An individual who:

(A) is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the school entity, or is an individual subcontractor of a service contractor;

(B) has or will have continuing duties related to the contracted services;

(C) has or will have direct contact with students; and

(D) is not a student in the school entity where the services are performed.

(4) [~~(2)~~] Criminal history record information--In accordance with the Texas Government Code, §411.082(2), information collected about a person by the DPS, a law enforcement or a criminal justice agency, or a private entity governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. [~~The term does not include fingerprint identification information.~~]

(5) Date of employment--For purposes of the Texas Education Code (TEC), §22.0834, the date of employment by an entity that contracts with a school entity shall be deemed to be:

(A) with respect to an individual independent contractor, the date of the contract or agreement to provide services to the school entity; and

(B) with respect to a covered contract employee of a service contractor, the date the employee began providing services to the contractor for compensation.

(6) Date of securing services--For purposes of the TEC, §22.0834(c), the date of securing the services of a covered contract employee by an entity that contracts with a school entity shall be deemed to be the date the employee accepts an offer from the service contractor for a specific job position or for the performance of a specific project that is to begin on a date that is certain or reasonably ascertainable.

(7) Direct contact with students--The contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional district employee. Contact with students that results from services that do not provide the opportunity for unsupervised interaction with an individual student, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides the opportunity for unsupervised contact with students, such as, without limitation, the provision of individualized coaching, tutoring, or other services.

(8) [~~(3)~~] National criminal history record information--In accordance with the TEC, [~~Texas Education Code,~~] §22.081, criminal

history record information obtained from both the DPS and the Federal Bureau of Investigation based on fingerprint identification information.

(9) [~~(4)~~] School entity--A Texas school district, an open-enrollment charter school, or a shared services arrangement.

(10) Service contractor--An entity, including an individual independent contractor, that contracts or agrees with a school entity to provide services through individuals who receive compensation, whether by written agreement or verbal understanding. A government entity that provides services such as, without limitation, monitoring, compliance, and technical assistance, to a school entity through individuals that are employed and compensated by the government entity, is also a service contractor.

(11) [~~(5)~~] Substitute teacher--A teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

§153.1117. School Contractor Employees.

(a) Purpose. Pursuant to the Texas Education Code (TEC), §22.0834, this section implements the criminal history record information review of certain school entity contract employees required by the TEC, §22.0834.

(b) District responsibilities.

(1) Required contractor criminal histories. A school entity shall ensure that each of its service contractors certify that the service contractor has obtained all criminal history record information for covered contract employees, as required by the TEC, §22.0834.

(2) Emergencies. In an emergency, a school entity may allow a covered contract employee to enter school entity property, without the required criminal history record information review, if the covered contract employee is accompanied by a school entity employee. A school entity may adopt rules regarding an emergency situation.

(3) Standards for criminal history review. A school entity may not allow a covered contract employee to serve at the school entity if the school entity obtains information through a criminal history record information review that the covered contract employee has a disqualifying conviction under the TEC, §22.085. However, if it chooses, a school entity may adopt a stricter standard related to criminal history record information than that of the TEC, §22.085.

(4) Required reports. Pursuant to §249.14(d)(1) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), if a school entity obtains information that a covered contract employee who holds a certificate issued by the State Board for Educator Certification (SBEC) has a reported criminal history, the superintendent, the superintendent's designee, or the director of the school entity shall notify the SBEC of that criminal history within seven calendar days of the date that information is obtained.

(c) Contractor responsibilities.

(1) Contract employee criminal history requirement. A service contractor shall obtain and ensure that its subcontractors obtain all criminal history record information that is required by the TEC, §22.0834, for all its covered contract employees and the covered contract employees of its subcontractors. If a service contractor determines that a person is not a covered contract employee, the service contractor shall make reasonable efforts to ensure that the conditions or precautions that result in such a determination continue to exist throughout the time that the contracted services are provided.

(2) National criminal history record information. As required by the TEC, §22.0834, before or immediately after employing or securing the services of a covered contract employee on or after January 1, 2008, who is not an applicant for or holder of a certificate under the TEC, Chapter 21, Subchapter B, a service contractor shall send or ensure that a covered contract employee sends to the Texas Department of Public Safety (DPS) the information, which may include fingerprints and photographs, that is necessary for the DPS to obtain the covered contract employee's national criminal history record information. The DPS shall report the national criminal history record information through the Clearinghouse, as provided by the Texas Government Code, §411.0845.

(3) Criminal history record information. As required by the TEC, §22.0834, a service contractor shall obtain from the DPS, any law enforcement or criminal justice agency, or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act all criminal history record information that relates to a covered contract employee who is employed before January 1, 2008, or who is an applicant for or holder of a certificate under the TEC, Chapter 21, Subchapter B, and who is not subject to a national criminal history record information review.

(4) School entity request for criminal history record information. A service contractor shall provide a school entity, at its request, the criminal history record information for its covered contract employees required by the TEC, §22.0834.

(5) Service contractor certification. A service contractor shall certify to the school entity that it has obtained all criminal history record information for its covered contract employees required by the TEC, §22.0834. The service contractor shall also certify that it will take reasonable steps to ensure that the conditions or precautions that have resulted in a determination that any person is not a covered contract employee continue to exist throughout the time that the contracted services are provided.

(6) Employees with disqualifying convictions. A service contractor shall not permit a covered contract employee to provide services at a school entity if the employee has a disqualifying conviction under the TEC, §22.085.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 8, 2008.

TRD-200802424
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER C. POST HEARING

22 TAC §157.17

The Texas Appraiser Licensing and Certification Board (TALCB) proposes an amendment to §157.17 regarding Final Decisions and Orders. The proposed amendments would require Board members to recuse themselves from all participation in any matters about which a real or perceived conflict of interest exists.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is that Board members serving on a Peer Investigative Committee pursuant to Texas Occupations Code §1103.453 may participate in the investigation of files assigned to the Committee without violating Tex. Govt. Code §2001.061 regarding *ex parte* communications, thereby enhancing the efficiency of the Board's complaint review processes. The public will also be assured of impartial decision-making by the Board because members will not participate in decision-making regarding issues about which they have a conflict of interest.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Occupations Code §1103.154, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to professional conduct.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§157.17. Final Decisions and Orders.

(a) - (b) (No change.)

(c) Conflict of Interest. A Board member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the Board member reviewed as a member of a Peer Investigative Committee;

(2) involving persons or transactions about which the Board member has a conflict of interest;

(3) involving persons or transactions related to the Board member sufficiently closely as to create the appearance of a conflict of interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802445

Devon Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §§97.135 - 97.138, 97.140 - 97.146

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§97.135 - 97.138 and §§97.140 - 97.146, concerning Sexually Transmitted Diseases (STD) Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV).

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.135 - 97.138 and §§97.140 - 97.146 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Amendments are proposed for these rules to more efficiently track statutory requirements, to clarify and update the rules, and to improve readability.

SECTION-BY-SECTION SUMMARY

The department proposes amendments to §§97.135 - 97.138 and §§97.140 - §97.146 to more efficiently track statutory requirements, to clarify and update the rules, and to improve readability.

Proposed changes at §97.135(a)(1)(A) would add language to better reflect the content of the materials referenced in Health and Safety Code, §81.090(k), would update the agency name, and would improve readability. Proposed changes at §97.135(a)(1)(B)(ii) would improve clarity and readability. Proposed changes at §97.135(a)(1)(C) would improve clarity by identifying the Clinical Laboratory Improvement Amendments of 1988 (CLIA) as a federal law, and would improve readability. Proposed changes at §97.135(a)(1)(D) would add language to reflect requirements at Health and Safety Code, §81.090(a)(3). Proposed changes at §97.135(a)(2)(A) would update the agency name and would improve readability. Proposed changes at §97.135(a)(2)(B)(ii) would improve clarity and readability. Proposed changes at §97.135(a)(2)(C) would improve clarity by identifying CLIA as a federal law, and would improve readability. Proposed changes at §97.135(a)(4)(A) would add language

to better reflect the requirements at Health and Safety Code, §81.090(m). Proposed changes at §97.135(a)(4)(B) would add language to better reflect the requirements at Health and Safety Code, §81.090(n). Proposed changes at §97.135(a)(5) would better reflect the requirements of Health and Safety Code, §81.090(m)(2) by adding the term "AIDS", and by deleting rule text referring to the content of counseling and instead inserting a cross-reference to the requirements in Health and Safety Code, §81.109.

Proposed amendments to §97.136(a) would revise text for ease of readability. Proposed changes to §97.136(c) would update the agency name. New proposed §97.136(d) would insert a cross-reference to additional requirements for midwives found at Health and Safety Code, §81.091.

Proposed amendments to §97.137(a) would revise text for readability and clarity. Proposed changes to §97.137(c) would delete the first sentence since the idea is more fully expressed in the federal guidance documents already referenced in the rule. Proposed changes to §97.137(c) would also clarify what federal documents are being cross-referenced. Proposed changes to §97.137(d) would update legacy agency references. New §97.137(e) is proposed to cross-reference the requirements and information found at Health and Safety Code, §§85.201 - 85.203, as well as cross-reference a department rule regarding the Exposure Control Plan in §96.202 of this title.

Proposed amendments to §97.138 would restructure the rule section to better reflect the requirements, and limitations, of the Code of Criminal Procedure, Article 21.31, as well as improve clarity and readability. The four-year review of this rule section found language that could be read to exceed the authority given the department under the statute (e.g. language binding court action). The proposed rewrite would bring the rule more squarely in line with the statutory authority. Proposed changes to §97.138(a) would provide updated statutory cross-references, and would more exactly reflect the Article 21.31 discretion given the judge in the procedures described. These proposed changes would also use cross-references to fully capture the various specific criminal offenses at issue, would more thoroughly describe the applicable diseases, and would improve clarity and readability. Proposed changes to §97.138(b) would cover the actual testing, provide a reference to agency guidance documents as required by the statute (see http://www.cdc.gov/std/treatment), and provide a cross-reference regarding requirements applicable to hospitals in the statute. Proposed changes to §97.138(c) reflect statutory language regarding obligations of the person performing the test and of the local health authority. Section 97.138(d) through (g) are proposed to be deleted as part of the reorganization of this rule section, and to make sure that the rules do not exceed the authority granted to the department under Article 21.31 of the statute. Article 21.31, along with various Health and Safety Code provisions, contain adequate detail regarding how and when testing should occur (in conjunction with the department testing guidance that is proposed to be referenced in §97.138(b) - see web link above).

Proposed amendments to §97.140(a) and (b)(1) update the program and agency names. Proposed amendments to §97.140(b)(2) would clarify the intent of the rule as to the duties performed and the medical test referenced in Health and Safety Code, §85.116(f). Proposed changes to §97.140(b)(3) would improve readability and would explicitly reflect the language at Health and Safety Code, §85.116(a). Proposed changes at §97.140(b)(3)(A) would match changes being proposed for §97.140(b)(2) and would also provide clarity and improved readability.

Proposed amendments to §97.141 would revise the section title to fully reflect the contents of the rule. Proposed changes at §97.141(a) would improve readability, update the agency name, and would update the statutory cross-reference. Proposed changes at §97.141(b) would revise the text to better describe contents of the course, and would delete unnecessary and incomplete language. Proposed changes at §97.141(c)(1) would revise text to more accurately describe those for whom no fee is charged under Health and Safety Code, §85.087(c), and would outline circumstances when the fee may be waived under agency policy. Proposed changes at §97.141(c)(2) would update the agency name. Proposed changes at §97.141(d) would update the method that is used for training notices.

Proposed amendments to §97.142 concern the HIV/AIDS Education of school age children and the Health and Safety Code, §§85.004 - 85.007 and §§163.001 - 163.002 do not require rules on this subject matter. The department complies with all these statutory provisions, such that the logical content for this rule is to direct interested persons to the place where they can obtain the agency documents in question.

Proposed amendments to §97.143(a) would update the agency name. Proposed changes at §97.143(b) would also update the legacy agency references and would delete a redundant statement. A new §97.143(c) is proposed to be added in order to address the requirements in Health and Safety Code, §85.012(e).

Proposed amendments to §97.144 would revise the title of the rule to better reflect the language in the Health and Safety Code, §85.141. Proposed changes to §97.144(a) and (b) would update legacy agency references.

Proposed amendments to §97.145(a) would revise text for better readability. Proposed changes to §97.145(b) would update the agency name.

Proposed amendments to §97.146 would revise text to improve readability and to more explicitly reflect to the full coverage of this rule subchapter.

FISCAL NOTE

Casey Blass, Director, Disease Intervention and Prevention Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated

will be continued HIV and STD disease intervention, treatment and prevention in Texas, along with the improved efficiency that comes from improving the clarity and readability of these rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Todd Logan, HIV/STD Comprehensive Services Branch, Health Promotion Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 533-3098 or by e-mail to todd.logan@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, Chapters 81 and 85; by Code of Criminal Procedure, Article 21.31; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed amendments affect Health and Safety Code, Chapters 81, 85 and 1001; and Government Code, Chapters 531 and 2001.

§97.135. Serological Testing during Pregnancy and Delivery.

(a) A pregnant woman shall be serologically tested for syphilis, HIV infection, and hepatitis B infection, once during gestation and again upon admittance for delivery.

(1) At the time of the first prenatal examination and visit, every physician or other person permitted by law to attend a pregnant woman during gestation shall:

(A) distribute to the woman printed materials regarding [~~about~~] syphilis, HIV, AIDS, and hepatitis B and their affects on pregnancy, [~~which shall be~~] provided by the [~~Texas~~] Department of State Health Services, and note on the woman's medical chart or health care record that the distribution of these materials were [~~material was~~] made;

(B) verbally notify the woman that an HIV test will be performed if the patient does not object and note on the medical records that verbal notification was given:

(i) (No change.)

(ii) if the woman objects to the test for HIV infection, the physician or other person may not conduct that [~~the~~] test. The physician or other person shall refer the woman to an anonymous HIV testing site or instruct the woman about anonymous HIV testing methods.

(C) take or cause to be taken a sample of the blood of the woman and submit such sample to a laboratory certified by the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA-88; 42 United States Code §263a), for:

(i) a standard serological test for syphilis; [~~and~~]

(ii) (No change.)

(iii) a standard serological test for hepatitis B infection; and [~~.~~]

(D) persons listed in paragraph (1) of this subsection must keep records of each case for nine months, and must deliver a copy of the report to any subsequent person attending the pregnant woman.

(2) When a pregnant woman is admitted for delivery, the physician or other person permitted by law to attend a pregnant woman shall:

(A) distribute to the woman printed materials, [~~material~~] provided by the [~~Texas~~] Department of State Health Services, regarding [~~which outlines~~] information about syphilis, HIV, AIDS, and hepatitis B, and note on the woman's medical chart or health care record that the distribution of material was made;

(B) verbally notify the woman that an HIV test will be performed if she does not object and note on the medical records that verbal notification was given:

(i) (No change.)

(ii) if the woman objects to the test for HIV infection, the physician or other person may not conduct that [~~the~~] test. The physician or other person shall refer the woman who objects to the test to an anonymous HIV testing site or instruct the woman about anonymous HIV testing methods.

(C) take or cause to be taken a sample of the blood of the woman and submit such sample to a laboratory certified by the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA-88; 42 United States Code §263a), for:

(i) a standard serological test for syphilis; [~~and~~]

(ii) a standard or rapid serological test for HIV infection unless the woman objects to the test; and

(iii) (No change.)

(3) (No change.)

(4) If a test for syphilis, HIV, or hepatitis B conducted under this section shows that the woman is or may be infected with syphilis, HIV, or hepatitis B, the physician or other person who submitted the sample for the test shall make test results available in a timely manner to allow appropriate medical intervention, and:

(A) provide or make available to the woman [~~disease specific~~] information relating to the specific disease and its treatment, presented such that the patient can understand its contents; or

(B) refer the woman to an entity that provides treatment for individuals infected with the diagnosed disease [~~acquired immune deficiency syndrome~~].

(5) provide or make available to the HIV or AIDS-infected [~~infected~~] woman counseling which complies with Texas Health and Safety Code, §81.109. [~~includes:~~]

[~~(A) the meaning of the test result;~~]

[~~(B) the possible need for additional testing;~~]

[~~(C) measures to prevent the perinatal transmission of HIV;~~]

[~~(D) the availability of appropriate health services;~~]

[~~(E) the benefits of partner notification and the availability of partner notification programs;~~]

[~~(F) increased understanding of HIV infection;~~]

[~~(G) explanation of the potential need for confirmatory testing for HIV;~~]

[~~(H) explanation of behavior changes to decrease the potential of HIV transmission;~~]

[~~(I) encouragement to seek appropriate medical care; and~~]

[~~(J) encouragement to notify persons with whom there has been contact capable of transmitting HIV.~~]

(b) (No change.)

§97.136. Prophylaxis against Ophthalmia Neonatorum.

(a) A physician, nurse, midwife, or other person in attendance at childbirth shall apply, or cause to be applied, to the child's eyes one of the following:

(1) a 1.0% ophthalmic tetracycline solution (drops) or ointment in each eye within two hours after birth; [~~or~~]

(2) - (3) (No change.)

(b) (No change.)

(c) The [~~Texas~~] Department of State Health Services (department) may provide an approved prophylaxis without charge to health-care providers if the newborn's financially responsible adult is unable to pay. The health-care provider shall not charge for the prophylaxis that is received free of charge from the department.

(d) Midwives shall follow the additional requirements in Texas Health and Safety Code, §81.091.

§97.137. Exposure of Health-Care Personnel to Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Infection.

(a) Health-care personnel are at risk of exposure to HIV or AIDS if the personnel are in contact with blood or other body fluids (amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions) or any body fluid visibly contaminated with blood through percutaneous inoculation or contact with an open wound, nonintact[~~,~~] skin or mucous membrane during the performance of normal job duties.

(b) (No change.)

(c) [~~Emphasis must be placed on preventing the transmission of HIV or AIDS and not on testing for its presence.~~] Health-care personnel should follow the most current exposure and risk guidance provided by the federal Centers for Disease Control and Prevention.

(d) Publications related to the prevention of HIV or AIDS are available upon request from: HIV/STD Comprehensive Services Branch [~~Bureau of HIV and STD Prevention~~], [~~Texas~~] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199.

(e) Texas Health and Safety Code, §§85.201 - 85.203 contain requirements and information for health care personnel regarding infection control standards and related issues under this section. Also, see §96.202 of this title (relating to Exposure Control Plan).

§97.138. Guidelines for Testing Certain Indicted Persons for Certain Diseases.

(a) The Texas Code of Criminal Procedure, Article 21.31(a), describes medical tests that a judge may order a person to undergo when that person is indicted for, or waives indictment for, a listed offense as described in Texas Code of Criminal Procedure, Article 21.31(a). Under that statutory language tests may be ordered for any of the following, under the described conditions: a sexually transmitted disease; acquired immune deficiency syndrome (AIDS); human immunodeficiency virus (HIV) infection; hepatitis A or B; tuberculosis; and/or any other disease designated as a reportable disease under Texas Health and Safety Code, §81.048. The court may direct the person to undergo the procedure or test on its own motion or on a motion filed pursuant to a request by the victim of the alleged offense. Subsequent tests may also be ordered, as provided by law. Procedures and requirements are outlined at Texas Code of Criminal Procedure, Article 21.31(a). The Texas Code of Criminal Procedure, Article 21.31(b), describes court-ordered testing regarding a person charged with an offense under Texas Penal Code, §22.11.

[~~(a) A court may order a person who is indicted for sexual assault or aggravated sexual assault to submit to a medical procedure or test for presence of sexually transmitted diseases or acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, or other agent of AIDS, under authority of the Code of Criminal Procedure, Article 21.31, and Texas Health and Safety Code, §81.094. The physician, who is directed by the court to perform the medical procedure or test, shall follow the rules in this section that prescribe the criteria for testing and that respect the rights of the victim of the alleged offense and the rights of the accused person.~~]

(b) A hospital shall perform the medical procedure or test on a person if a court so orders, as required in Texas Health and Safety Code, §81.094. All aspects of testing, whether performed in a hospital or not, under this section must be conducted in accordance with CDC Sexually Transmitted Diseases Treatment Guidelines and with other applicable CDC and department testing guidelines and in accordance with state and federal confidentiality requirements (note that Texas Code of Criminal Procedure, Article 21.31, allows certain specific disclosures).

[~~(b) In order to protect the privacy of the person being tested, the court, in consultation with the health authority, shall use or arrange the use of a pseudonym for the accused person on all requests and reports pertaining to the procedure or test. The pseudonym shall be distinct and known only to the physician, the health authority, the person being tested, and the court. The person performing the procedures or test shall make the results available directly to the local health authority.~~]

(c) The person performing the procedure or test under subsection (a) of this section shall timely submit the test results to the local health authority, following which that local health authority must

timely notify the victim of the alleged offense, and the person charged with the offense, of the test result.

[(c) For AIDS, gonorrhea, HIV infection, genital infections from Chlamydia trachomatis infection, syphilis, and hepatitis (acute or chronic viral type B), the procedures and tests should be those specified in the Texas Department of Health's (department) publication titled "Identification and Confirmation of Reportable Diseases" (pertaining to the reporting of diseases and health conditions) which is referenced in §97.3(a)(1) of this title (relating to What To Report). The physician shall request instructions relative to procedures and tests for other sexually transmitted diseases from the commissioner of health (commissioner) or his/her designee.]

[(d) The health authority shall meet with the victim of the alleged offense and disclose the results of the medical procedures or test; no other person shall be present during the notification unless permitted by the victim. The local health authority shall advise the victim of the medical implications of the test results whether or not the test results are positive or negative. The health authority shall instruct the victim to receive further medical intervention by the victim's personal physician. If the victim resides outside the State of Texas, the notification may be made by telephone.]

[(e) The health authority shall notify the accused person of the results of the procedure or test. If the result indicates the presence of a communicable disease, the health authority shall instruct the accused person as required by the Communicable Disease Prevention and Control Act, Texas Health and Safety Code, §81.083 or §81.109, and shall perform the appropriate duties and make the reports, as required by §97.3 of this title.]

[(f) After reporting the results of the procedure or test to the victim and to the accused person, the health authority shall file an affidavit with the court attesting that the order has been executed. Disclosure of the test results to any persons other than the victim and the accused person is prohibited under the Code of Criminal Procedure, Article 21.31.]

[(g) A health authority may delegate any duty imposed by these sections to a person supervised by the health authority. If a victim or a person tested under this section resides outside the jurisdiction of the local health authority, the notifications required by this section may be made by the local health authority in the jurisdiction where the person resides.]

§97.140. Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job.

(a) Purpose. The purpose of this section is to implement the provisions of the Communicable Disease Prevention and Control Act, Texas Health and Safety Code, §85.116, which requires the [Texas] Department of State Health Services (department) to adopt rules to implement the Act.

(b) Counseling and testing.

(1) The counseling for state employees exposed to HIV on the job should be performed in accordance with the most current guidelines developed by the department. Copies are available for review in the HIV/STD Comprehensive Services Branch [Bureau of HIV and STD Prevention], [Texas] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.

(2) A state employee who may have been exposed to HIV while engaged in activities within the course and scope [performing duties] of state employment may not be required to be tested for HIV.

(3) HIV counseling and testing will be performed on the [a] state employee, when requested by that employee, at the expense of the state agency if:

(A) the employee documents to the agency's satisfaction that he or she may have been exposed to HIV while engaged in activities within the course and scope [performing duties] of state employment [of the agency]; and

(B) (No change.)

(c) (No change.)

§97.141. Fee to Cover the Cost of Providing the Human Immunodeficiency Virus (HIV) and Hepatitis C Protocol-Based Counseling [and Testing] Course.

(a) Purpose. The purpose of this section is to implement the provisions of the Health and Safety Code, §85.087 and §94.004 [§93.003], requiring the [Texas] Department of State Health Services (department) to develop and offer a training course for persons providing HIV and/or hepatitis C counseling, and authorizes the department to charge a fee for the course.

(b) Content. The training course includes [shall include] information relating to [HIV] risk reduction and [to] the special needs of persons with positive [HIV and/or hepatitis C] test results for the diseases. General information on these diseases is sent to participants prior to the actual course. [The department's Bureau of HIV and STD Prevention determines the content. Detailed information about the course may be obtained from the Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.]

(c) Fee.

(1) The course fee will be $300 for each participant, except that no fee [whose affiliation] is required from employees of [with] an entity that receives state or federal funds for HIV or Hepatitis C counseling and testing through a current [does not] contract with the department. The HIV/STD Comprehensive Services Branch [Bureau of HIV and STD Prevention] may waive the fee, at its sole discretion, according to its written [established] internal procedures regarding compelling public health need.

(2) Fees shall be made payable to the [Texas] Department of State Health Services. All fees are non-refundable and must be received by the department prior to participation in the course. The accepted forms of payment are cashiers check or money order. No other form of payment will be accepted.

(d) Notice. Notice of the training courses will be announced through the on-line training calendar located at http://www.dshs.state.tx.us/hivstd/training/schedule.shtm [correspondence to contractors and other appropriate entities].

§97.142. Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children.

The documents referenced in Texas Health and Safety Code, §§85.004 - 85.007 and §§163.001 - 163.002 can be obtained from the Health Promotion Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199.

[(a) The Texas Department of Health has prepared and maintains the model education program/resource guide required by the Texas Health and Safety Code, §§85.004, 85.005, 85.007, and §§163.001-163.002. The guide provides resources for health educators to develop a model health education program suitable for school-age children and is aimed at preventing the spread of the human immunodeficiency virus (HIV), which is the cause of acquired immunodeficiency syndrome (AIDS).]

[~~(b) The guide is available for review in the Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies are available upon request.~~]

§97.143. Model HIV/AIDS Workplace Guidelines.

(a) The [~~Texas~~] Department of State Health Services has prepared and maintains model workplace guidelines consistent with current public health information and with state and federal laws and regulations as required by the Texas Health and Safety Code, §85.012.

(b) Interested individuals or entities may review the guidelines or obtain copies by contacting the HIV/STD Comprehensive Services Branch [~~Bureau of HIV and STD Prevention~~], [~~Texas~~] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199. [~~Copies are available on request.~~]

(c) Employers are encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the department guidelines referenced in this section.

§97.144. Model Policies for the Handling, Care, and Treatment of HIV/AIDS-infected Persons in the Custody of the Texas Department of Criminal Justice [~~or Under the Supervision of Correctional Facilities~~], Local Law Enforcement Agencies, Municipal and County Correctional Facilities [~~Fire Departments, Emergency Medical Services Providers~~], and District Probation Departments.

(a) The [~~Texas~~] Department of State Health Services has prepared the model policies concerning persons in custody required by the Texas Health and Safety Code, §85.141.

(b) The model policies are available for review in the HIV/STD Comprehensive Services Branch [~~Bureau of HIV and STD Prevention~~], [~~Texas~~] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199. Copies are available upon request.

§97.145. Anonymous and Confidential HIV Testing.

(a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall provide voluntary[~~,~~] and affordable counseling and testing programs for HIV infection, or provide referrals to such programs. These entities shall offer both anonymous and confidential testing for HIV infection or provide referrals for anonymous and confidential testing.

(b) All HIV testing sites funded by the [~~Texas~~] Department of State Health Services shall offer confidential and anonymous HIV testing on site.

§97.146. Confidentiality of [~~HIV/STD~~] Test Results.

A test result under this subchapter is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by Health and Safety Code, §81.103 and other applicable state and federal law. Under Texas Health and Safety Code, §81.103(j), a [~~A~~] person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this section is a Class A misdemeanor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802440

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER J. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§140.501 - 140.522

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§140.501 - 140.522, concerning the regulation and certification of medical radiologic technologists.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 143.1 - 143.20 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is proposing to repeal the existing sections and adopt the rules in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation. The proposed repeals and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC, Chapter 140, Health Professions Regulation.

The new rules transfer and update existing language. Many sections were transferred with no modification. New language is added in some sections in order to clarify the rules for medical radiologic technologists, health care practitioners and professionals, and consumers. Additionally, the rules require continuing education for non-certified technicians.

SECTION-BY-SECTION SUMMARY

New §140.501 sets out purpose and scope of the rules. New §140.502 defines terms used in the subchapter and adds a new definition of mobile stationary x-ray equipment to clarify that such equipment is not portable x-ray equipment. New 140.503 covers the membership and operations of the Medical Radiologic Technologists Advisory Committee. New §140.504 sets out the fees required for application, registration, upgrade, renewal, and issuance of a duplicate certificate. New §140.505 covers exemptions from certification as a medical radiologic technologist, including the definition of a student. New §140.506 describes the procedures and criteria for approval or disapproval of an application by the department. New §140.507 explains the types of certificates and temporary permits and applicant eligibility for certification. New §140.508 sets out the procedures for examination eligibility for medical radiologic technologists. New §140.509 provides standards for the approval of curricula and instructors. New §140.510 provides timelines for the processing of renewal and late renewal applications, and sets out the requirements for inactive status and certificate renewal for voluntary charity care and military status certificate holders. New §140.511 sets

out continuing education requirements and requires non-certified technicians to complete 6 hours of continuing education hours, which may be obtained through self-directed study, in order to renew the non-certified technician registration.

New §140.512 covers procedures for changes of name and address. New §140.513 sets out procedures for certifying or permitting persons with criminal backgrounds. New §140.514 sets out violations and prohibited actions, procedures concerning complaints, and disciplinary actions the department may take against a person when violations have occurred. New §140.515 establishes rules relating to advertising and competitive bidding by a medical radiologic technologist. New §140.516 sets out dangerous and hazardous radiologic procedures and the restrictions on who may perform those procedures. The section clarifies that positron emission tomography is included within nuclear medicine studies. New §140.517 contains provisions regarding registered nurses and physician assistants who perform radiologic procedures. The provisions of this section are not new requirements and are also contained within §140.516; however, the new §140.517 is proposed for clarity and ease of use. New §140.518 provides guidelines for mandatory training programs for non-certified technicians. New §140.519 establishes procedures for the registry of non-certified technicians. New §140.520 establishes procedures regarding hardship exemptions, including clarification of documentation required when an applicant is unable to attract or retain a certificate holder. New §140.521 sets out training requirements for person who perform bone densitometry training and who are not licensed, certified, or registered. New §140.522 sets outs requirements for alternate training.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Individual certificate holders and registrants are required to comply with the sections.

There may be an impact to individuals who are required to comply with the sections as proposed. If an individual is a registered non-certified technician, the person will be required to complete six hours of continuing education every two years in order to renew the registration. It is estimated that the cost to each non-certified technician will be $150 biennially. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the certification and regulation of medical radiologic technologists.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Program Director, Medical Radiologic Technologists Certification Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617 or by email to mrt@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §604.052 and §604.053, which authorizes the adoption of rules for the regulation of medical radiologic technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of these rules implements Government Code, §2001.039.

The proposed new sections affect the Occupations Code, Chapter 604; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§140.501. Purpose and Scope.

(a) Purpose. These sections are intended to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(b) Scope. These sections cover definitions; the Medical Radiologic Technologist Advisory Committee; fees; applicability of subchapter; exemptions; application requirements and procedures for examination and certification; types of certificates and eligibility; examinations; standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name and address; certifying persons with criminal backgrounds to be medical radiologic technologists; disciplinary actions; alternate eligibility require-

ments; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; hardship exemptions; and alternate training requirements.

§140.502. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(2) Applicant--A person who applies to the Department of State Health Services for a certificate or temporary certificate, general or limited or a provisional certificate.

(3) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(4) Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(5) Certificate--A medical radiologic technologist certificate, general, limited or provisional, unless the wording specifically refers to one or the other, issued by the Department of State Health Services.

(6) Chiropractor--A person licensed by the Texas Board of Chiropractic Examiners to practice chiropractic.

(7) Commissioner--The Commissioner of the Department of State Health Services.

(8) Committee--The Medical Radiologic Technologist Advisory Committee.

(9) Dentist--A person licensed by the Texas State Board of Dental Examiners to practice dentistry.

(10) Department--The Department of State Health Services.

(11) Direct supervision--A practitioner must be physically present and immediately available.

(12) Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(2)(B).

(13) Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(14) Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(15) General certification--An authorization to perform radiologic procedures.

(16) Instructor--An individual approved by the department to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(17) Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(18) Limited medical radiologic technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular.

(19) Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for medical reasons.

(20) Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(21) NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(22) Non--Certified Technician (NCT)--A person who has completed a training program and who is listed in the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(23) Pediatric--A person within the age range of fetus to age 18 or otherwise required by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(24) Physician--A person licensed by the Texas Medical Board to practice medicine.

(25) Physician assistant--A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(26) Podiatrist--A person licensed by the Texas State Board of Medical Podiatric Examiners to practice podiatry.

(27) Practitioner--A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

(28) Provisional medical radiologic technologist (PMRT)--An authorization to perform radiologic procedures not to exceed 180 days for individuals currently licensed or certified in another jurisdiction.

(29) Radiation--Ionizing radiation in addition to beyond normal background levels from sources such as medical and dental radiologic procedures.

(30) Radiologic procedure--Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

(31) Registered nurse--A person licensed by the Texas Board of Nursing to practice professional nursing.

(32) Registry--A list of names and other identifying information of non-certified technicians.

(33) Sponsoring institution--A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(34) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(35) Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(36) TRCR--Texas Regulations for Control of Radiation, 25 Texas Administrative Code, Chapter 289. The regulations are available from Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189, phone 1-512-834-6688 or at www.dshs.state.tx.us/radiation.

(37) X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, types of x-ray equipment are as follows:

(A) portable x-ray equipment--x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable x-ray equipment may also include equipment designed to be hand-carried;

(B) stationary x-ray equipment--x-ray equipment that is installed in a fixed location; or

(C) mobile stationary x-ray equipment--x-ray equipment that is permanently affixed to a motor vehicle or trailer with appropriate shielding.

§140.503. Medical Radiologic Technologist Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Medical Radiologic Technologist Advisory Committee.

(2) The committee is established under Government Code, §531.012, which allows the Executive Commissioner of the Health and Human Services Commission to appoint advisory committees as needed.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the Executive Commissioner of the Health and Human Services Commission.

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of the Health and Human Services Commission concerning rules to implement standards adopted under the Act relating to the regulation of persons performing radiologic procedures.

(2) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of the Health and Human Services Commission.

(e) Review and duration. By November 1, 2012, the Executive Commissioner of the Health and Human Services Commission will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of eleven members appointed by the Executive Commissioner of the Health and Human Services Commission. The composition of the committee shall include:

(1) four consumers;

(2) one licensed physician who is a radiologist;

(3) one licensed medical physicist or a hospital administrator;

(4) one certified medical radiologic technologist whose primary practice is in diagnostic radiography;

(5) one certified medical radiologic technologist whose primary practice is in nuclear medicine technology;

(6) one certified medical radiologic technologist whose primary practice is in radiation therapy;

(7) one licensed physician who has experience in radiologic procedures and who practices in a rural community or at a site serving a medically underserved population in Texas as defined in the Medical Practice Act, Texas Occupations Code, Chapter 152; and

(8) one registered nurse or certified physician assistant who has experience in radiologic procedures and who practices in a rural community or at a site serving a medically underserved population in Texas as defined in the Medical Practice Act, Texas Occupations Code, Chapter 152.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) Each officer shall serve until October 31 of each odd-numbered year. Each officer may holdover until his or her replacement is elected.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner of the Health and Human Services Commission. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability of a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the Executive Commissioner of the Health and Human Services Commission. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff. Upon approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee's presiding officer.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statements by members.

(1) The Executive Commissioner of the Health and Human Services Commission, department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of the Health and Human Services Commission, department, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner of the Health and Human Services Commission, the department or the committee except with approval by the department. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

§140.504. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a certificate is issued. All fees shall be submitted in the form required by the department. All fees are nonrefundable.

(b) The schedule of fees is as follows:

(1) application and initial certification fee--$75;

(2) biennial certificate renewal fee--$60;

(3) one to 90-day late renewal fee--one and one half of the normally required renewal fee;

(4) 91-day to one year late renewal fee--two times the normally required renewal fee;

(5) certificate and/or identification card replacement or duplicate fee--$20;

(6) temporary certificate fee--$25;

(7) general examination fee--the fee for the examination as set by contract with the examining body;

(8) chiropractic examination fee--the fee for the examination as set by contract with the examining board;

(9) skull, chest, spine, extremities or podiatric examination fee--the fee for the examination as set by contract with the examining board;

(10) upgrade of a temporary certificate to a renewable certificate, limited or general--$25;

(11) limited instructor approval fee--$50;

(12) limited curriculum application fee--$900 two-year term per course of study;

(13) site visit fee--a fee equal to the round trip travel expenses including meals and lodging of the inspection committee members, not to exceed $1,000;

(14) training program application fee--$350 (the application fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(15) training program amendment fee--$40 (the amendment fee for training - programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(16) training program biennial renewal fee--$300 (the renewal fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(17) limited curriculum amendment fee--$40;

(18) biennial limited curriculum approval fee for general certificate programs--$450:

(19) non-certified technician application fee--$50;

(20) non-certified technician renewal fee--$50;

(21) non-certified technician late renewal fee--$50;

(22) hardship exemption application fee--$25;

(23) provisional certificate fee--$75;

(24) returned check fee--$50; and

(25) retired medical radiologic technologist biennial renewal fee--$25.

(c) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(d) For all applications and renewal application, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(e) An applicant whose check for the application and initial certification fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds in the amount of the application and initial certification fee plus the returned check fee within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(f) An approved applicant whose check for the temporary or certificate fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the temporary or certificate fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the application and the approval shall be invalid.

(g) A certificate holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the renewal fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the certificate shall not be renewed. If a renewal certificate has already been issued, it shall be invalid.

(h) If the department's notice, as set out in subsections (e) - (g) of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by certified mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid.

(i) The department shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the medical radiologic technologist certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments.

(j) The department may notify the applicant's or the certificate holder's employer that the person has failed to comply with this section and that any approval granted or certificate issued is no longer valid.

§140.505. Applicability of Subchapter; Exemptions.

(a) Except as specifically exempted by subsections (b) and (c) of this section, the provisions of the Act and this subchapter apply to any person representing that he or she performs radiologic procedures.

(b) This subchapter does not prohibit the performance of a radiologic procedure by the following:

(1) a person who is a practitioner and performs the procedure in the course and scope of the profession for which that person holds the license; or

(2) a person who performs a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography and under the instruction or direction of a dentist, if the person and the dentist are in compliance with rules adopted under the Act, §601.251 and §601.252 by the Texas State Board of Dental Examiners.

(c) This subchapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §140.516 of this title (relating to Dangerous or Hazardous Procedures) by the following:

(1) a person who has successfully completed a training program for non-certified technicians (NCT), in accordance with §140.518 of this title (relating to Mandatory Training Programs for Non-Certified Technicians), §140.521 of this title (relating to Bone Densitometry Training) and who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §§601.251 - 601.253, by the Texas Board of Chiropractic Examiners, Texas Medical Board, Texas Board of Nursing or Texas State Board of Podiatric Medical Examiners;

(2) a person who has successfully completed a training program for NCTs, in accordance with §140.518 of this title and who performs the procedure in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Healthcare Organizations;

(3) students of medicine, osteopathic medicine, podiatry or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with paragraph (1) of this subsection;

(4) a person who performs only in-vitro clinical or laboratory testing procedures as described in the Texas Regulations for the Control of Radiation;

(5) a student enrolled in a radiologic technology program which meets the requirements of §140.509 of this title (relating to Standards for the Approval of Curricula and Instructors) or §140.518 of this title, who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(6) a person who performs radiologic procedures for a period of not more than ten days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §140.511 of this title (relating to Continuing Education Requirements) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, the American Registry of Radiologic Technologists (ARRT), the Nuclear Medicine Technology Certification Board (NMTCB), the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa; or

(7) a person who performs the procedure in a hospital, federally qualified health center (FQHC), or for a practitioner, if a hardship exemption was granted to the hospital, FQHC or practitioner by the department during the previous 12-month period under §140.520 of this title (relating to Hardship Exemptions).

§140.506. Application Requirements and Procedures For Examination and Certification.

(a) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department shall not consider an application as officially submitted until the applicant pays the correct fee in accordance with §140.504 of this title (relating to Fees). The correct fee must accompany the application form.

(3) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 calendar days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(4) Applications will be accepted for a temporary certificate from students not more than 28 calendar days prior to the date of graduation from an approved medical radiologic technologist education program.

(5) A certificate may be reinstated only in accordance with §140.510(e) of this title (relating to Certificate Issuance, Renewals, and Late Renewals).

(b) Required application materials.

(1) The application form shall contain the following items:

(A) specific information regarding personal data, social security number, birth date, current and previous places of employment, other state licenses and certificates held, misdemeanor and felony convictions, and educational and training background;

(B) a statement that the applicant has read the Texas Medical Radiologic Technologist Certification Act (the Act) and this chapter and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(D) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, surrender or suspension of the certificate;

(E) a statement that the applicant understands that the fees submitted are nonrefundable unless the processing time is exceeded without good cause as set out in subsection (e)(1) of this section;

(F) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued; and

(H) a statement that the applicant shall advise the department of his or her current mailing address within 30 working days of any change of address;

(2) Applicants for a certificate who do not qualify under the provisions of §140.507(b) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents:

(A) if the applicant is not a graduate of or expected to graduate within 28 calendar days from a general certificate program

in accordance with §140.509(a) of this title (relating to Standards for the Approval of Curricula and Instructors), a photocopy which has been notarized as a true and exact copy of an unaltered official diploma or official transcript indicating graduation from high school; a certificate of high school equivalency issued by the appropriate educational agency; or an official transcript from an accredited college or university indicating that the applicant received a high school diploma or the equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and

(B) at least one of the items set out as follows:

(i) a photocopy of an unaltered certificate of completion from an approved medical radiologic technologist educational program in accordance with §140.509 of this title. The certificate must contain the following items: name of the program; name of the graduate; the exact day and month applicant is recognized as a program graduate; and the signature of the program director or his designate;

(ii) a photocopy of original letter or other notification from either the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technology Certification Board (NMTCB) that the applicant is considered examination eligible; or

(iii) if applying prior to graduation, from an approved medical radiologic program in accordance with §140.509 of this title, an expected graduation statement signed by the program director or registrar. Within 30 working days of the completion date noted in the graduation statement, the department must receive:

(I) a photocopy of the certificate of completion or letter on letterhead indicating graduation, containing the items set out in clause (i) of this subparagraph; or

(II) a statement signed by the program director or registrar indicating that the applicant officially completed the program.

(3) Persons applying under the provisions of §140.507(d)(5) of this title must submit to the department a properly completed other license/registration documentation report form which has been completed and signed by an authorized representative of the governmental agency which issued the license or other form of registration. A photocopy of the license or other form of registration in medical radiologic technology issued by the government of another state, District of Columbia, or territory of the United States shall be submitted by the applicant.

(c) Application approval.

(1) The department shall be responsible for reviewing all applications.

(2) The department shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapprove applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this section and §140.507 of this title;

(B) has failed to pass the examination prescribed in §140.508 of this title (relating to Examinations);

(C) has failed to remit any required fees;

(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(E) has obtained or attempted to obtain a certificate issued under the Act by bribery or fraud;

(F) has made or filed a false report or record made in the person's capacity as a medical radiologic technologist;

(G) has intentionally or negligently failed to file a report or record required by law;

(H) has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law;

(I) has engaged in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the board in §140.514 of this title (relating to Disciplinary Actions);

(J) has developed an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(K) has failed to report to the department the violation of the Act or this subchapter by another person;

(L) has employed, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(M) has violated a provision of the Act, a rule adopted under the Act, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(N) has had a certificate revoked, suspended, or otherwise subjected to adverse action or been denied a certificate by another certification authority in another state, territory, or country;

(O) has been convicted of, pled nolo contendere to, or received deferred adjudication for a crime which directly relates to the practice of radiologic technology; or

(P) has been initially convicted of a felony or a misdemeanor involving moral turpitude, or whose probation imposed pursuant to such conviction has been revoked by the court.

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with the Administrative Procedure Act. Within ten days after receipt of the written notice, the applicant shall give written notice to the department to waive or request the hearing. If the applicant fails to respond within ten days after receipt of the notice of opportunity or if the applicant notifies the department that the hearing be waived, the department shall disapprove the application.

(3) An applicant whose application has been disapproved under paragraph (1)(A) - (P) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a current application, the certification fee and proof, satisfactory to the department, of compliance with the then current requirements of this chapter and the provisions of the Act.

(e) Application processing.

(1) The department shall comply with the following procedures in processing applications for a certificate.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for certification--21 working days. The notice of acceptance may include a statement that an application for temporary certificate received more than 28 calendar days from the date of the applicant's graduation will be held pending until the applicant is within 28 calendar days of graduation; and

(ii) letter of application deficiency--21 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval--42 working days; and

(ii) letter of denial of certificate--90 working days.

(2) The department shall comply with the following procedures in processing refunds of fees paid to the department.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the department. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for certification or renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists that gives the department good cause for exceeding the time period.

(3) The time periods for contested cases related to the denial of certification or renewal are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable.

§140.507. Types of Certificates and Applicant Eligibility.

(a) General.

(1) The department shall issue general certificates, limited certificates, temporary certificates (general or limited) or provisional certificates.

(2) Certificates and identification cards shall bear the signature of the commissioner of the department.

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A person certified as an MRT, LMRT, NCT or PMRT shall carry or display the original certificate or current identification card at the place of employment. Photocopies shall not be carried or displayed.

(5) A person certified as an MRT, LMRT, NCT or PMRT shall only allow his or her certificate to be copied for the purpose of verification by employers, licensing boards, professional organizations and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the board's office in writing or by phone to verify certification.

(6) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) No one shall make any alteration on any certificate or identification card issued by the department.

(b) Special provisions for persons who are nationally certified. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue a general certificate to a person who is currently registered by the American Registry of Radiologic Technologists (ARRT) as a radiographer, is currently registered by the ARRT as a radiation therapist, or is currently registered by the ARRT or is currently certified by the Nuclear Medicine Technologist Certification Board (NMTCB) as a nuclear medicine technologist.

(c) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsection (b) of this section:

(1) graduation from high school or its equivalent as determined by the Texas Education Agency;

(2) attainment of 18 years of age;

(3) freedom from physical or mental impairment which interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of patients;

(4) submission of a satisfactory completed application on a form supplied by the department;

(5) payment of the required fees; and

(6) eligibility for the specific certificate requested as set out in subsections (d), (e), (f), (g), (h) or (i), of this section.

(d) Medical radiologic technologist. To qualify for a general certificate an applicant shall meet at least one of the following requirements:

(1) possess current national certification as a registered technologist by the ARRT;

(2) have successfully completed the ARRT's examination in radiography, radiation therapy, or nuclear medicine technology;

(3) possess current national certification as a certified nuclear medicine technologist by the NMTCB;

(4) have successfully completed the NMTCB's examination in nuclear medicine technology; or

(5) be currently licensed or otherwise registered as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more strin-

gent than or are substantially equivalent to the requirements for Texas certification; and

(6) any other documentation acceptable to the department.

(e) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (c) of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; chiropractic; podiatry; and cardiovascular.

(2) Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, portable radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and/or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(4) To qualify for a certificate as an LMRT an applicant must provide satisfactory documentary evidence to the department of the following:

(A) the successful completion of a limited course of study as set out in §140.509 of this title (relating to Standards for the Approval of Curricula and Instructors) and the successful completion of the appropriate limited examination in accordance with §140.508 of this title (relating to Examinations);

(B) current licensure or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for the Texas limited certificate at the time of application to the department; or

(C) current general certification as an MRT issued by the department. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested. The request shall be postmarked on or before the certificate expiration date and shall be accompanied by the general certificate and the certificate and/or identification card replacement fee; and

(D) any other documentation acceptable to the department.

(f) Temporary general medical radiologic technologist. To qualify as a temporary general medical radiologic technologist, an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (c) of this section. For the general temporary certificate, an applicant must:

(1) have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by the United States Department of Education including but not limited to the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT);

(2) be approved by the ARRT as examination eligible;

(3) be approved by the NMTCB as examination eligible;

(4) be currently licensed or otherwise registered as an MRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the department; or

(5) have completed education, training and clinical experience which is equivalent to that of an accredited educational program in radiography as listed in paragraph (1) of this subsection. An applicant who meets this requirement is eligible to be examined for state certification purposes only.

(g) Temporary limited medical radiologic technologist. The applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (c) of this section. The applicant must:

(1) have successfully completed or be within 28 calendar days of successful completion of a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, which is approved in accordance with §140.509(b) of this title.

(2) be currently enrolled in a course of study in a general certificate program approved in accordance with §140.509(a) of this title and have been issued a certificate of completion by the program signifying that the person has completed classroom instruction, clinical instruction, evaluations and competency testing in all areas included in the limited curriculum, as set out in §140.509(d) of this title; or

(3) be currently licensed or otherwise registered as an LMRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the department.

(h) Special provisions for technologists on active military duty. An MRT or LMRT whose certificate has expired and was not renewed under §140.510(g) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) may file a complete application for another certificate of the same type as that which expired.

(1) The application shall be on official department forms and be filed with the application and initial certification fee.

(2) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(3) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified.

(4) An application is subject to disapproval in accordance with §140.506(d) of this title (relating to Application Requirements and Procedures for Examination and Certification).

(5) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

(i) Provisional medical radiologic technologist. A provisional certificate may be issued to an applicant who is currently licensed or certified in another jurisdiction and who:

(1) has been licensed or certified in good standing as a medical radiologic technologist for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(2) has passed a national or other examination recognized by the department relating to the practice of radiologic technology; and

(3) is sponsored by a medical radiologic technologist certified by the department under this Act with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

§140.508. Examinations.

(a) Examination eligibility.

(1) Holders of a temporary general certificate or temporary limited certificate may take the appropriate examination provided the person complies with the requirements of the Act and this chapter.

(2) Persons who qualify under §140.507(b), (d), (e) or (i) of this title (relating to Types of Certificates and Applicant Eligibility) are not required to be reexamined for state certification.

(b) Approved examination for the general certificate. A general certificate shall be issued upon successful completion of the Nuclear Medicine Technology Certification Board (NMTCB) examination or the appropriate examination of the American Registry of Radiologic Technologists (ARRT). The three disciplines are radiography, nuclear medicine technology, and radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the general temporary certificate holder.

(c) Approved examination for the limited certificate. An approval letter requesting the limited certification fee shall be issued upon successful completion of the appropriate examination, as follows:

(1) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(2) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(3) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(4) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(5) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(6) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(7) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(d) Applicants approved for the limited certification examination will be allowed three attempts to pass the examination. The three attempts must be made within a three-year period of time. When either three unsuccessful attempts have been made or three years have expired, the individual is no longer considered eligible under this section. To be eligible for an additional examination the applicant must submit documentation indicating completion of remedial activities. The fourth attempt must occur within the one-year period following the third unsuccessful attempt. Those failing the fourth attempt, or waiting longer than one year following the third unsuccessful attempt, shall only become eligible by re-entering and completing an approved limited certification program. Upon the applicant's successful completion of the examination, the department shall issue an approval letter for the limited certificate.

(e) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the agency or organization administering the examination(s).

(f) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.

(g) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the department or the agency or organization administering the examinations prescribed by the department.

(h) Examination Results.

(1) Notification to examinees. Results of an examination prescribed by the department but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the department.

(3) Deadlines. The department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(i) Refunds. Examination fee refunds will be in accordance with policies and procedures of the department or the agency or organization prescribed by the department to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

§140.509. Standards for the Approval of Curricula and Instructors.

(a) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by the United States Department of Education including but not limited to the Joint Review Committee on Education in Nuclear Medicine Technology (JRCNMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT).

(b) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must:

(1) be accredited by the JRCERT to offer a limited curriculum in radiologic technology;

(2) be accredited by the Joint Review Committee on Education in Cardiovascular Technology (JRCCVT) to offer a curriculum in invasive cardiovascular technology;

(3) be accredited by JRCERT under subsection (b) of this section; or

(4) be approved by the department and be offered within the geographic limits of the State of Texas. Subsections (c) - (g) of this section apply only to department-approved programs.

(c) Application procedures for limited certificate programs which are not accredited by JRCERT or JRCCVT. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring

institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1) All official application forms must be notarized and shall be accompanied by the application fee in accordance with §140.504 of this title (relating to Fees).

(2) An original and one copy of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable, a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3) Narrative materials must be typed, double-spaced, and clearly legible. All signatures on the official forms and supporting documentation must be originals. Photocopied signatures will not be accepted.

(4) Notices will be mailed to applicants informing the applicant of the completeness or within 60 days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying the application is 120 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees, as set out in §140.506(e)(2) and (3) of this title (relating to Application Requirements and Procedures for Examination and Certification).

(5) If the application is revised or supplemented during the review process, the applicant shall submit an original and four copies of a transmittal letter plus an original and three copies of the revision or supplement. If a page is to be revised, the complete new page must be submitted with the changed item/information clearly marked on five copies.

(6) The application shall include:

(A) the anticipated dates of the program or course of study;

(B) the daily hours of the program or course of study;

(C) the location, mailing address, phone and facsimile numbers of the program;

(D) a list of instructors approved by the department, in accordance with subsection (f) of this section, and any other persons responsible for the conduct of the program including management and administrative personnel. The list must indicate what courses each will teach or instruct or the area(s) of responsibility for the non-instructional staff;

(E) a list of clinical facilities, written agreements on forms prescribed by the department from clinical facilities signed by the program director and the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the department has accepted the additional clinical facility in accordance with paragraph (10) of this subsection. The items are:

(i) the number and types (name brands and model numbers) of radiologic equipment to be utilized in the limited curriculum;

(ii) a copy of the current registration(s) for the radiologic equipment from the department's Radiation Control Program;

(iii) the number and location(s) of examination rooms available;

(iv) whether or not the clinical facility is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by the department is required;

(v) an acknowledgement that students may only perform radiologic procedures under supervision of a practitioner, a limited medical radiologic technologist (LMRT) employed at the clinical facility or medical radiologic technologist (MRT) employed at the clinical facility;

(vi) copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures;

(vii) an acknowledgment that the students in a limited curriculum program in the categories of skull, chest, spine, abdomen, extremities, chiropractic or podiatric shall not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum; and

(viii) an acknowledgment that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration and by which the program director shall administer the program. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §140.507(c)(1) - (2) of this title (relating to Types of Certification and Applicant Eligibility).

(G) the name of the program director who is an approved instructor in accordance with subsection (f) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice;

(H) a letter of acknowledgement and a photocopy of the current Texas license from a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director. The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program;

(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32, and 19 Texas Administrative Code, Chapter 175, or verification of accreditation by the Texas Higher Education Coordinating Board; and

(J) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be conducted

concurrently, the maximum number of students to be enrolled at any one time.

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §140.507(e) of this title. Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (d) of this section. If the curriculum differs from that set out in subsection (d) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.

(8) In making application to the department, the program director shall agree in writing to:

(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment;

(B) provide on-site instruction and direction by a practitioner for students when performing radiologic procedures on human beings;

(C) prohibit students from being assigned to any situation where they would be required to apply radiation to a human being while not under the on-site instruction or direction of a practitioner;

(D) prohibit intentional exposure to human beings from any source of radiation except for medically prescribed diagnostic purposes;

(E) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures to properly conduct the course. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment and radioactive materials utilized in the program shall be used only in facilities registered or licensed by the department's Radiation Control Program;

(F) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(G) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date the program began, the date of completion, the categories of instruction, and the signatures of the program director or independent sponsor and medical director/program advisor;

(H) site inspections by departmental representatives to determine compliance and conformity with the provision of this section will be at the discretion of the department;

(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the department and utilized as a criteria for rescinding approval. In addition to this criteria, the department may rescind approval in accordance with §140.514 of this title (relating to Disciplinary Actions); and

(J) comply with the Texas Regulations for the Control of Radiation, including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.

(9) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with §140.504 of this title.

(10) Following program approval, a written request(s) for amendment(s) shall be submitted to and approved by the department in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with §140.504 of this title.

(d) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 132 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, and chiropractic, and not less than 66 clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate. Pediatric instruction shall be included in the hours of training. The following subject areas and minimum number of hours (in parentheses) must be included in all programs and must be instructor directed. The recommended clock hours for each shall be:

(A) radiation protection for the patient, self, and others--40;

(B) radiographic equipment including safety standards, operation, and maintenance--15;

(C) image production and evaluation--35;

(D) applied human anatomy and radiologic procedures--20;

(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid--10;

(F) medical terminology--6; and

(G) medical ethics and law--6; and

(2) a clinical practicum for each category of limited curriculum including pediatrics is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart.

Figure: 25 TAC §140.509(d)(2)

(A) The clinical instruction must be concurrent with the classroom instruction, as set out in paragraph (1) of this subsection.

(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 calendar days of the starting date of the clinical experience. Variances from this must be approved in advance by the department and must demonstrate good cause. A request for a variance must be submitted in writing to the administrator. For the purposes of this section, a normal pregnancy or medical disability shall constitute good cause.

(C) For the skull category, the 100 hours of clinical experience must include a minimum of 4 independently performed procedures to include the skull (posterior/anterior, anterior/posterior, lateral and occipital), paranasal sinuses, facial bones, and the mandible. At least one procedure must be the mandible. The mandible procedure may be completed by simulation with 90% accuracy. Only one student shall receive credit for any one radiologic procedure performed.

(D) The program director shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 working days of completion of the clinical experience. Students who successfully complete the required clinical experience may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §140.506(b)(2)(B)(iii) of this title. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures. For cardiovascular, persons who makes the final evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing cardiovascular procedures.

(e) Limited certificate educational program approval.

(1) Provided the requirements are met, the sponsoring institution shall receive a letter from the department indicating approval of the educational program in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The applicant shall be notified in accordance with §113.1 of this title.

(3) If approval is proposed to be denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(f) Instructor approval for limited certificate programs.

(1) All persons who plan to or who will provide instruction and training in the limited certificate courses of study or programs shall:

(A) submit a completed application form prescribed by the department;

(B) submit the prescribed application fee in accordance with §140.504 of this title;

(C) document the appropriate instructor qualifications in accordance with subsection (g) of this section.

(2) Guest lecturers who are not full or part-time employees of the sponsoring institution are not required to apply for instructor approval.

(3) Within 21 days of receipt of the application in the department, a notice will be mailed informing the applicant of the completeness or deficiency of the application. The time of receipt of the last item necessary to complete the application to the date of issuance of a written notice approving or denying the application is 42 working days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees paid as set out in §140.506(e)(2) and (3) of this title.

(4) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within ten days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(g) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and not less than 6 months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training;

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas Board of Chiropractic Examiners, Texas Medical Board, or Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, and the United States Department of Health and Human Services; or

(D) be a currently licensed medical physicist.

(2) A limited medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course of study different from the technologist's current level of certification. An LMRT who holds a limited certificate in spine radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

(h) Application procedures for limited certificate programs accredited by JRCERT or JRCCVT.

(1) Application shall be made by the program director on official forms available from the department.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the limited curriculum application fee, in accordance with §140.504 of this title;

(B) a copy of the current accreditation issued to the program by the JRCERT or JRCCVT;

(C) a description in narrative and/or table format clearly indicating that the applicable content of the limited certificate program curriculum be equal to the general certificate curriculum; and

(D) an agreement to allow the department to conduct an administrative audit of the program to determine compliance with this section.

§140.510. Certificate Issuance, Renewals, and Late Renewals.

(a) Issuance of certificates.

(1) The department shall send each applicant whose application has been approved a general, limited or provisional certificate with an expiration date and a certificate number. An identification card shall be included with the certificate.

(2) The department shall replace a lost, damaged, or destroyed certificate or identification card(s) upon a written request and payment of the replacement fee. Requests shall include a statement detailing the loss or destruction of the original certificate and/or identification card(s), or be accompanied by the damaged certificate or card(s).

(b) Temporary certificates.

(1) The department shall send each applicant whose application has been approved for the temporary certificate (general or limited) an appropriate temporary certificate which shall expire one year from the date of issue.

(2) All temporary certificates are not subject to renewals or extensions for any reason. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(c) Certificates. The initial general, limited certificate and NCT is valid from date of issuance through the medical radiologic technologist's (MRT's), limited medical radiologic technologist's (LMRT's) or Non-Certified Technician (NCT's) birth month.

(d) Certificate renewal. Each MRT, LMRT, or NCT shall renew the certificate biennially on or before the last day of the MRT's, LMRT's, or NCT's birth month.

(1) Each MRT, LMRT, and NCT is responsible for renewing the certificate before the expiration date and shall not be excused from paying late fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or late renewal.

(2) At least 60 days prior to the expiration of an MRT's, LMRT's, or NCT's certificate, the department shall send notice to the MRT, LMRT or NCT at the address in the department's records at the time the notice is sent, of the expiration date of the certificate, the amount of renewal fee due, and a renewal form which the MRT, LMRT or NCT must complete and return to the department with the required renewal fee.

(3) The renewal form shall require the provision of the MRT's, LMRT's or NCT's preferred mailing address, primary employment address and phone number, information regarding misdemeanor and felony convictions (if any since initial certification or last renewal), and continuing education completed in accordance with §140.511 of this title (relating to Continuing Education Requirements).

(4) The MRT, LMRT, or NCT has renewed the certificate when the renewal form and required renewal fee are mailed on or before the expiration date of the certificate and received by the department. The postmarked date shall be considered the date of mailing. The processing times and procedures set out in §140.506(e) of this title (relating to Application Requirements and Procedures for Examination and Certification) shall apply to renewals.

(5) The department is not responsible for lost, misdirected, or undelivered renewal application forms, fees, renewal certificates, or renewal identification cards.

(6) The department shall issue renewal identification cards for the current renewal period to an MRT, LMRT or NCT who has met all the requirements in paragraph (4) of this subsection for renewal. The cards shall be sent to the preferred mailing address provided on the renewal application form. The renewal cards shall be issued for a two-year period.

(7) The department shall deny renewal of a certificate if required by the Education Code, §57.491, concerning defaults on guaranteed student loans.

(8) The department may not renew the certificate of an MRT, LMRT or NCT who is in violation of the Act or this chapter at the time of renewal.

(e) Renewal for retired medical radiologic technologists performing voluntary charity care.

(1) A "retired medical radiologic technologist" is defined as a person who:

(A) is above the age of 55;

(B) is not employed for compensation in the practice of medical radiology; and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of medical radiology by a retired medical radiologic technologist without compensation or expectation of compensation.

(3) A retired medical radiologic technologist providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired medical radiologic technologist renewal fee required by §140.504 of this title (relating to Fees); and the continuing education hours required by §140.511 of this title.

(f) Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal form, proof of the continuing education taken, and the late renewal fee. An active annual registration or credential card issued by the American Registry of Radiologic Technologists does constitute supporting documentation. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(A) If the certificate has been expired for 90 days or less, a person may renew the certificate by paying the one to 90-day late renewal fee.

(B) If the certificate has been expired for over 90 days but not more than one year, a person may renew the certificate by paying the 91-day to one-year late renewal fee.

(C) A person must comply with the continuing education requirements for renewal as set out in §140.511 of this title before the late renewal is effective.

(2) The late renewal is effective if it is mailed to the department or personally delivered by the MRT, LMRT, or NCT or his/her agent to the department not more than one year after certificate expiration. If mailed, the postmark date shall be considered the date of mailing. A postage metered date is not considered as a postmark. A certificate not renewed within one year after expiration cannot be renewed.

(3) A person whose certificate has expired may not administer a radiologic procedure during the one-year period in violation of the Act. A person may not use a title that implies certification while the certificate is expired.

(4) A person whose certificate has been expired for more than one year may apply for another certificate by meeting the then-current requirements of the Act and this chapter which apply to all new applicants.

(g) Active duty. If an MRT, LMRT, or NCT is called to or on active duty with the armed forces of the United States and so long as the MRT, LMRT, or NCT does not administer a radiologic procedure in a setting outside of the active duty responsibilities during the time the MRT, LMRT, or NCT is on active duty, the MRT, LMRT, or NCT shall not be required to complete any continuing education activities during the renewal period in which the MRT, LMRT was on active duty.

(1) Renewal of the certificate may be requested by the MRT, LMRT, or NCT a spouse, or an individual having power of attorney from the MRT, LMRT, or NCT. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) A copy of the official orders or other official military documentation showing that the MRT, LMRT, or NCT was on active

duty for any portion of the renewal period shall be filed with the department along with the renewal form.

(3) An affidavit stating that the MRT or LMRT has not administered a radiologic procedure in a setting outside of the MRT or LMRT's active duty responsibilities during the time of active duty shall be filed with the department along with the renewal form. The affidavit may be executed by the MRT, LMRT, or NCT a spouse, or an individual having power of attorney from the MRT, LMRT, or NCT.

(4) A certificate covered by this subsection may be renewed in accordance with subsection (e) of this section. The 60-day late fee shall be waived for a renewal under this subsection.

(5) An MRT, LMRT, or NCT on active duty with the United States armed forces serving outside the State of Texas may request renewal of the certificate at any time before or after the expiration of the certificate. An MRT, LMRT, or NCT on active duty serving within the State of Texas may request renewal before the expiration of the certificate or under subsection (e) of this section. An MRT, LMRT, or NCT on active duty serving within the State of Texas who does not renew under subsection (e) of this section may file a complete application for another certificate in accordance with §140.507(h) of this title (relating to Types of Certificates and Applicant Eligibility).

§140.511. Continuing Education Requirements.

(a) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's, LMRT's, or NCT's birth month and ending on the last day of each MRT's, LMRT's, or NCT's birth month two years thereafter.

(1) An MRT must complete 24 hours of continuing education acceptable to the department during each biennial renewal period.

(2) An LMRT must complete 12 hours of continuing education acceptable to the department during each biennial renewal period. The continuing education activities must be general radiation health and safety topics or related to the categories of limited certificate held.

(3) At least 3 hours of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities.

(4) No more than 21 hours for MRTs or 9 hours for LMRTs of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, or a combination thereof which meet the requirements set out in subsection (d) of this section.

(5) An MRT or LMRT who also holds a current Texas license/registration/certification in another health profession may satisfy the continuing education requirement for renewal of the MRT or LMRT with hours counted toward renewal of the other license, registration, or certification provided the hours meet all the requirements of this section.

(6) An MRT or LMRT who holds a current and active annual registration or credential card issued by the American Registry of Radiologic Technologists (ARRT) indicating that the MRT is in good standing and not on probation satisfies the continuing education requirement for renewal of the general or limited certificate provided the hours accepted by the agency or organization which issued the card were completed during the MRT's biennial renewal period and meet or exceed the requirements set out in paragraph (5) of this subsection and subsection (b) of this section. The department shall be able to verify the status of the card presented by the MRT or LMRT electronically or by other means acceptable to the department. The department may review documentation of the continuing education activities in accordance with subsection (e) of this section.

(7) An NCT must complete 6 hours of continuing education acceptable to the department during the biennial renewal period. The continuing education activities may include verifiable independent self-study of reading materials, audio materials, audiovisual materials, programs online, attendance and participation in instructor-directed activities, or a combination thereof.

(8) A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(9) Persons who hold temporary certificates, either general or limited, are not subject to these continuing education requirements.

(b) Content. All continuing education activities should provide for the professional growth of the technologist.

(1) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(2) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(3) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(c) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and:

(1) is offered for semester hour or quarter hour credit by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools and is directly or indirectly related to the disciplines of radiologic technology as specified in subsection (a) of this section; or

(2) is offered for continuing education credit by an institution accredited by the Joint Review Committee on Education in Radiologic Technology (JRCERT), Joint Review Committee on Education in Nuclear Medicine Technology (JRCNMT), Joint Review Committee on Education in Cardiovascular Technology (JTCCVT), or the Council on Chiropractic Education (CCE) and is directly or indirectly related to the disciplines of radiologic technology; or

(3) is an educational activity which meets the following criteria:

(A) the content meets the requirements set out in subsection (b) of this section; and

(B) is approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations, or offered by a federal, state, or local governmental entity.

(d) Additional acceptable activities. The additional activities for which continuing education credit will be awarded are as follows:

(1) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(2) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(A) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(B) 6 hours credit during a renewal period for an advanced cardiac life support course;

(3) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission on Accreditation of Healthcare Organizations (JCAHO)-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(4) teaching in a program described in subsection (c) of this section with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(5) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the department the MRT must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(e) Reporting of continuing education. A technologist may request an exemption as set out in subsection (i) of this section or may submit a copy of the technologist's current and active annual registration or credential card indicating that the technologist is in good standing and not on probation in accordance with subsection (a)(6) of this section, with a signed statement that the technologist completed during the MRT's biennial renewal period at least 50% of the required number of hours of continuing education directly related to the performance of a procedure utilizing ionizing radiation for medical purposes and that no more than 21 hours for MRTs and 9 hours for LMRTs of the required number of hours shall be verifiable independent self-study activities.

(1) At the time of renewal or at other times determined by the department, the department will select a random sample of technologists to verify compliance with the continuing education requirements. The technologists selected in the random sample shall submit at the time of renewal or within 30 days following notification from the department:

(A) documentation of participation in and completion of continuing education acceptable to the department; and

(B) any additional information or documentation deemed necessary by the department to verify the technologist's compliance with the continuing education requirements.

(2) The department shall notify the technologist of the results of the verification process.

(f) Determination of contact hour credits. The department shall credit continuing education experiences and activities as follows.

(1) Semester hour or quarter hour credits as set in subsection (c)(1) of this section shall be credited on the basis of 15 contact hour credits for each semester hour and 10 contact hour credits for each quarter hour successfully completed with a grade of "C" or better, evidenced by an official transcript.

(2) Activities or experiences as set out in subsection (c)(2) and (3) of this section shall be credited on a one-for-one basis with one contact hour credit for each contact hour of attendance and participation. Credit will be accepted only in whole hour or half-hour increments. Minutes in excess of whole or half-hour increments shall not be aggregated for additional credit.

(g) Activities unacceptable as continuing education. The department shall not grant credit for:

(1) education incidental to the regular professional activities of an MRT, LMRT or NCT such as learning from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional association, society, or other organization;

(3) any activities completed before or after the two-year continuing education period for which the credit is submitted;

(4) verifiable independent study activities which have no post-test or other measurement or evaluation instrument provided;

(5) verifiable independent study activities as set out in subsection (a)(5) of this section which exceed 50% of the clock hour requirements;

(6) learning activities indirectly related to radiologic technology as set out in subsection (b)(3) of this section which exceed 50% of the contact hour requirements;

(7) learning activities which are related to non-ionizing forms of radiation as set out in subsection (b)(2) of this section which exceed 50% of the contact hour requirements;

(8) any activities or experiences which do not meet the criteria set out in subsections (a), (b), (c) or (d) of this section;

(9) activities in accordance with subsection (d)(1) and (2) of this section which are repeated during the renewal period;

(10) activities in accordance with subsection (d)(4) of this section in excess of the one-time credit per topic of instruction or in excess of a total of 6 contact hours during a continuing education period;

(11) activities in accordance with subsection (d)(5) of this section in excess of 6 contact hours during a continuing education period; or

(12) activities that are an employment requirement or concerning specific institutional policies and procedures.

(h) Failure to complete the required continuing education. A person may renew late under §140.510(f) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) after all the continuing education requirements have been met.

(i) Exemptions. The department will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(1) a technologist completes and forwards to the department a sworn affidavit indicating retirement status for the entire renewal period for which the exemption is requested. A technologist who has been granted this exemption and who desires to resume performing radiologic procedures shall be required to accrue continuing education hours. These hours shall be accrued immediately following the technologist's return to performing radiologic procedures to satisfy the continuing education requirements for renewal in accordance with subsection (a) of this section;

(2) a technologist completes and forwards to the department a sworn affidavit indicating that the technologist is employed but does not perform radiologic procedures for the entire renewal period. A technologist who has been granted this exemption and who desires to resume performing radiologic procedures shall be required to accrue continuing education hours. These hours shall accrue immediately following the technologist's return to performing radiologic procedures to satisfy the continuing education requirements for renewal in accordance with subsection (a) of this section;

(3) a technologist shows reasons of health, certified by a licensed physician, that prevent compliance with the continuing education requirement for the entire renewal period. A technologist must complete and forward to the department a sworn affidavit and provide documentation that clearly establishes the period of disability and resulting physical limitations;

(4) a technologist submits a sworn statement and shows reason which prevents compliance and the reason is acceptable to the department;

(5) a technologist is called to or on active duty with the armed forces of the United States for the entire renewal period and so long as the technologist does not administer a radiologic procedure in a setting outside of the active duty responsibilities during the time on active duty. The technologist must file a copy of orders to active military duty with the department; or

(6) a technologist submits proof of successful completion of an advanced level examination or an entry level examination in another discipline of radiologic technology administered or approved by the ARRT during the renewal period. All examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes.

(j) Partial exemption. The department may consider granting an exemption for one-half of the continuing education requirement if the technologist submits proof of successful completion during the renewal period of an examination accepted by the department in a topic dealing with non-ionizing radiation. The balance of the hours must be directly related to the performance of a radiologic procedure utilizing ionizing radiation in accordance with subsection (b)(1) of this section. The following are examinations accepted by the department:

(1) the registry examination offered by the American Registry of Diagnostic Medical Sonographers; and

(2) the advanced-level examination in non-ionizing imaging offered by the ARRT.

(k) Denial of request for exemption. A technologist whose request for exemption is denied by the department may request a hearing on the denial within 30 days after the date the department notified the technologist of the exemption denial. If no hearing is requested in writing within 30 days, the opportunity for hearing shall be waived.

(l) Record keeping. An MRT, LMRT or NCT shall be responsible for keeping, for a period of not less than two years, accurate and complete documentation or other records of continuing education reported to the department. An MRT, LMRT or NCT shall submit documentation of attendance and participation in continuing education activities upon written request by the department.

§140.512. Changes of Name and Address.

(a) The certificate holder shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 calendar days of such change(s).

(b) Notification of address changes shall be made in writing including the name, mailing address, and zip code and be mailed to the department.

(c) Before any certificate and identification cards will be issued by the department, notification of name changes must be mailed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The certificate holder shall submit a certified check or money order for the replacement fee, as set out in §140.504 of this title (relating to Fees). Upon receipt of the new certificate and identification cards, the MRT, LMRT, or NCT shall return the previously issued certificate and cards immediately to the department.

§140.513. Certifying Persons with Criminal Backgrounds.

(a) This section sets out the guidelines and criteria for the eligibility of persons with criminal backgrounds to obtain certification as a medical radiology technologist, limited medical radiologic technologist or non-certified technician.

(1) The department may suspend or revoke any existing certificate, disqualify a person from receiving any certificate, or deny to a person the opportunity to be examined for a certificate if the person is convicted of, enters a plea of nolo contendere or guilty to a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a MRT, LMRT or NCT.

(2) In considering whether a pleading of nolo contendere or a criminal conviction directly relates to the occupation of an MRT, LMRT, or NCT the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification;

(C) the extent to which a certification might offer an opportunity to engage in further criminal activity of the same type as that which the person previously has been involved;

(3) The following felonies and misdemeanors apply to any certificate because these criminal offenses indicate an inability or a tendency to be unable to perform as an MRT, LMRT, or NCT:

(A) the misdemeanor of knowingly or intentionally acting as an MRT, LMRT, or NCT without a certificate under the Medical Radiologic Technologist Certification Act (the Act);

(B) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(C) a misdemeanor or felony offense involving:

(i) forgery;

(ii) tampering with a governmental record;

(iii) delivery, possession, manufacturing, or use of controlled substances and dangerous drugs;

(D) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection;

(E) the extent to which any certificate might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(F) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an MRT, NCT or LMRT. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53, the legal authority for the provisions of this section.

(4) The misdemeanors and felonies listed in paragraph (3) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

(b) Procedures for revoking, suspending, or denying a certificate or temporary certificate to persons with criminal backgrounds.

(1) The administrator shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary certificate after hearing in accordance with the provisions of the Administrative Procedure Act, the Government Code, Chapter 2001, and the formal hearing procedures in §§1.21, 1.23, 1.25 and 1.27 of this title.

(2) If the department denies, suspends, or revokes a certificate or temporary certificate under these sections after hearing, the administrator shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a District Court of Travis County for review of the evidence presented to the department and its decision; and

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable.

§140.514. Disciplinary Actions.

(a) The department is authorized to take the following disciplinary actions for the violation of any provisions of the Medical Radiologic Technologist Certification Act (Act) or this chapter:

(1) suspension, revocation, or nonrenewal of a certificate;

(2) rescission of curriculum, training program, or instructor approval;

(3) denial of an application for certification or approval;

(4) assessment of a civil penalty in an amount not to exceed $1,000 for each separate violation of the Act;

(5) issuance of a reprimand; or

(6) placement of the offender's certificate on probation and requiring compliance with a requirement of the department, including submitting to medical or psychological treatment, meeting additional educational requirements, passing an examination, or working under the supervision of an MRT or other practitioner.

(b) The department may take disciplinary action against a person subject to the Act for:

(1) obtaining or attempting to obtain a certificate issued under the Act by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as an MRT;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the department;

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the department the violation of the Act or any allegations of sexual misconduct by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(9) violating a provision of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

(c) Engaging in unprofessional conduct means the following:

(1) making any misleading, deceptive, or false representations in connection with service rendered;

(2) engaging in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol;

(3) performing a radiologic procedure on a patient or client which has not been authorized by a practitioner;

(4) aiding or abetting a person in violating the Act or rules adopted under the Act;

(5) any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;

(6) performing a radiologic procedure which results in mental or physical injury to a patient or which creates an unreasonable risk that the patient may be mentally or physically harmed;

(7) misappropriating medications, supplies, equipment, or personal items of the patient, client or employer;

(8) performing or attempting to perform radiologic procedures in which the person is not trained by experience or education or in which the procedure is performed without appropriate supervision;

(9) performing or attempting to perform any medical procedure which relates to or is necessary for the performance of a radiologic procedure and for which the person is not trained by experience or education or when the procedure is performed without appropriate supervision;

(10) performing a radiologic procedure which is not within the scope of an LMRT's certificate, as set out in §140.507(e) of this title (relating to Types of Certificates and Applicant Eligibility);

(11) performing a radiologic procedure which is not within the scope of an NCT's registration, as set out in §140.518(a) of this title (related to Mandatory Training Programs for Non-Certified Technicians);

(12) disclosing confidential information concerning a patient or client except where required or allowed by law;

(13) failing to adequately supervise a person in the performance of radiologic procedures;

(14) providing false or misleading information on an application for employment to perform radiologic procedures;

(15) providing information which is false, misleading, or deceptive regarding the status of certification; registration with the American Registry of Radiologic Technologists, Cardiovascular Credentialing International, or Nuclear Medicine Technology Certification Board; or licensure by another country, state, territory, or the District of Columbia;

(16) discriminating on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical handicaps or economic status in the performance of radiologic procedures;

(17) impersonating or acting as a proxy for an examination candidate for any examination required for certification;

(18) acting as a proxy for an MRT, LMRT, or NCT at any continuing education required under §140.511 of this title (relating to Continuing Education Requirements);

(19) obtaining, attempting to obtain, or assisting another to obtain certification or placement on the registry by bribery or fraud;

(20) making abusive, harassing or seductive remarks to a patient, client or co-worker in the workplace or engaging in sexual contact with a patient or client in the workplace;

(21) misleadingly, deceptively or falsely offering to provide education or training relating to radiologic technology;

(22) failing to complete the continuing education requirements for renewal as set out in §140.511 of this title;

(23) failing to document the continuing education requirements for renewal as required by the department;

(24) failing to cooperate with the department by not furnishing required documents or responding to a request for information or a subpoena issued by the department or the department's authorized representative;

(25) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by use of threats or harassment against any person;

(26) failing to follow appropriate safety standards or the Texas Regulations for the Control of Radiation in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(27) failing to adhere to universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(28) defaulting on a guaranteed student loan, as provided in the Education Code, §57.491;

(29) assaulting any person in connection with the practice of radiologic technology or in the workplace;

(30) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage to or from a person licensed, certified or registered by a state health care regulatory agency. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to MRTs and LMRTs;

(31) using or permitting or allowing the use of the person's name, certificate, or professional credentials in a way that the person knows, or with the exercise of reasonable diligence should know:

(A) violates the Act, this chapter or department rule relating to the performance of radiologic procedures; or

(B) is fraudulent, deceitful or misleading;

(32) knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision; or

(33) knowingly concealing information relating to enforcement of the Act or this chapter.

(34) failing reasonably to protect the certificate from fraudulent or unlawful use.

(35) engaging in sexual conduct in the workplace. A MRT, LMRT, NCT or a temporary certificate holder shall not engage in sexual conduct with a client, patient, co-worker, employee, staff member, contract employee, MRT, LMRT, NCT or temporary certificate holder on the premises of any job establishment. For the purposes of this section, sexual conduct includes:

(A) any touching of any part of the genitalia or anus except as necessary for the performance of a radiologic procedure as defined in §140.502 of this title (relating to Definitions);

(B) any touching of the breasts of a female except as necessary for the performance of a radiologic procedure as defined in §140.502 of this title;

(C) any offer or agreement to engage in any activity described in this subsection;

(D) sexual contact in the work place without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;

(F) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments, including making sexual comments about a person's body.

(d) A person subject to disciplinary action under subsection (b)(6) of this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that the person is able to resume the practice of radiologic technology.

(e) An instructor engages in unprofessional conduct if the instructor violates any of the provisions of subsection (b) or (c) of this section or if the instructor:

(1) is an MRT or LMRT who fails to renew the certificate;

(2) is a practitioner who fails to renew his or her license or who has the license suspended, revoked, or otherwise restricted by the appropriate regulatory agency;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, religion, national origin, age, physical handicaps, sexual orientation, or economic status;

(4) abandons an approved course of study or a training program with currently enrolled students;

(5) knowingly provides false or misleading information on the application for instructor approval or on any student's application for certification; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, §85.203.

(f) An education program engages in unprofessional conduct if the program, including its employees or agents, violates any of the provisions of subsection (b) or (c) of this section or if the program:

(1) makes any misleading, deceptive, or false representations in connection with offering or obtaining approval of an education program;

(2) fails to follow appropriate safety standards or the TRCR in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, age, physical handicaps, economic status, religion or national origin;

(4) aids or abets a person in violating the Act or rules adopted under the Act;

(5) abandons an approved education program with currently enrolled students; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, Section 85, Subchapter I.

(g) The department may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

(h) In determining the appropriate action to be imposed in each case, the department shall take into consideration the following factors:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since the date of the violation;

(5) the number and type of previous disciplinary cases filed against the person or program;

(6) the length of time the person has performed radiologic procedures;

(7) the length of time the instructor or education program has been approved;

(8) the actual damage, physical or otherwise, to the patient or student, if applicable;

(9) the deterrent effect of the penalty imposed;

(10) the effect of the penalty upon the livelihood of the person or program;

(11) any efforts for rehabilitation; and

(12) any other mitigating or aggravating circumstances.

(i) Formal hearing requirements:

(1) Notice requirements.

(A) Notice of the hearing shall be given according to the notice requirements of the Administrative Procedure Act (APA).

(B) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(C) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(2) Parties to the hearing.

(A) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee or executive director, as appropriate.

(B) A party may appear personally or be represented by counsel or both.

(3) Prehearing conferences.

(A) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(i) the formulation and simplification of issues;

(ii) the necessity or desirability of amending the pleading;

(iii) the possibility of making admissions or stipulations;

(iv) the procedure at the hearing.

(v) specifying the number of witnesses;

(vi) the mutual exchange of prepared testimony and exhibits;

(vii) the designation of parties; and

(viii) other matters which may be expedite the hearing.

(B) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(C) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(4) Assessing the cost of a court reporter and the record of the hearing.

(A) In the event a court reporter is utilized in the making of the record of the proceedings, the department shall bear the cost of the per diem or other appearance fee for such reporter.

(B) The department may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The department may pay the cost of the transcript or assess the cost to one or more parties.

(C) In the event a final decision of the department is appealed to the district court wherein the department is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the department may be require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the department proceedings that is required to be transmitted to the reviewing court.

(5) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(6) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(7) Final orders or decisions.

(A) The final order or decision will be rendered by the department. The department is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(C) All final orders shall be signed by the commissioner; however, interim orders may be issued by the Administrative Law Judge.

(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(8) Motion for rehearing. A motion for rehearing shall be governed by the APA, Texas Government Code, §2001.146, and shall be addressed to the department and filed with the administrator.

(9) Appeals. Subchapter G, Texas Government Code, all appeals from final department orders or decisions shall be governed by the APA and communications regarding any appeal shall be to the administrator.

(j) The following applies after disciplinary action has been taken.

(1) The department may not reinstate a certificate to a holder or cause a certificate to be issued to an applicant previously denied a certificate unless the department is satisfied that the holder or applicant has complied with requirements set by the department and is capable of engaging in the practice of radiologic technology. The person is responsible for securing and providing to the department such evidence, as may be required by the department. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in this chapter; however, the department may not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed and that the person is capable of engaging in the practice of radiologic technology.

(4) If the commissioner of health revokes or does not renew the certificate, the former certificate holder may reapply in order to obtain a new certificate by complying with the requirements and procedures at the time of reapplication. The department may not issue a new certificate until the administrator or the department determines that the reasons for revocation or nonrenewal have been removed and that the person is capable of engaging in the practice of radiologic technology. An investigation may be required.

(5) If the commissioner rescinds the approval of an instructor or program, the formerly approved instructor or program may reapply for approval by complying with the requirements and procedures at the time of reapplication. Approval will not be issued until the administrator or the department determines that the reasons for revocation have been removed. An investigation may be required.

(k) Pursuant to the Act, §601.351, the department is authorized to assess an administrative penalty against a person who violates the Act or this chapter.

§140.515. Advertising or Competitive Bidding.

(a) The department may not adopt rules restricting advertising or competitive bidding by a medical radiologic technologist except to prohibit false, misleading, or deceptive practices.

(b) A person, including a medical radiologic technologist, who is not certified under the Act shall not use the word "medical radiologic technologist", on any sign, display, or other form of advertising unless the person is expressly exempt from the certification requirement.

(c) A certificate holder shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not really subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or registration of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name, title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(d) When an assumed name is used in a person's practice as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician the legal name or certificate number of the medical radiologic technologist, limited medical radiologic technologist, or non-certified technician must be listed in conjunction with the assumed name. An assumed name used by a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician must not be false, misleading, or deceptive.

(e) A limited medical radiologic technology educational program or a training program for non-certified technicians shall not make false, misleading, or deceptive statements concerning the activities or programs of another limited medical radiologic technology education program or a training program for non-certified technicians.

(f) A limited medical radiologic technology educational program or a training program for non-certified technicians shall not maintain, advertise, solicit for or conduct any course of instruction intended to qualify a person for certification or placement on the registry without first obtaining approval from the department.

(g) Advertisement by an educational or training program seeking prospective students must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(h) Advertisements seeking prospective students must include the full and correct name of the educational or training program.

(i) No statement or representation shall be made to prospective or enrolled students that employment will be guaranteed upon completion of any program or that falsely represents opportunities for employment.

(j) No statement shall be made by an educational or training program that it has been accredited unless the accreditation is that of an appropriate nationally recognized accrediting agency listed by the United States Office of Education.

(k) No educational or training program shall advertise an employment agency under the same name or a confusingly similar name or at the same location as the educational or training program. No representative shall solicit students for a program through an employment agency.

§140.516. Dangerous or Hazardous Procedures.

(a) General. This section identifies radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT). There are specific procedures identified in §140.517 of this title (relating to Registered Nurses and Physician Assistants Performing Radiologic Procedures) which may be performed by a registered nurse (RN) or a physician assistant trained under §140.518 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §140.522 of this title (relating to Alternative Training Programs). A person trained under §140.518 or §140.522 of this title is not an MRT, LMRT or otherwise certified under the Act and shall not perform a dangerous or hazardous procedure identified in this section unless expressly permitted by this section or by §140.517 of this title.

(b) Dangerous procedures. Except as otherwise provide in this chapter, the list of dangerous procedures which may only be performed by a practitioner or MRT are:

(1) nuclear medicine studies to include positron emission tomography (PET);

(2) administration of radio-pharmaceuticals; administration does not include preparation or dispensing except as regulated under the authority of the Texas State Board of Pharmacy;

(3) radiation therapy, including simulation, brachytherapy and all external radiation therapy beams including Grenz rays:

(4) computed tomography (CT) or any variation thereof;

(5) interventional radiographic procedures, including angiography, unless performed by an LMRT with a certificate issued in the cardiovascular category;

(6) fluoroscopy unless performed by an LMRT with a certificate issued in the cardiovascular category; and

(7) cineradiography (including digital acquisition techniques), unless performed by an LMRT with a certificate issued in the cardiovascular category.

(c) Hazardous procedures. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

(1) conventional tomography;

(2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell, and Waters views;

(3) portable x-ray equipment;

(4) spine radiography, excluding AP/PA, lateral and lateral flexion/extension views;

(5) spine radiography;

(6) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle and AP scapula;

(7) pelvic girdle radiographs, excluding AP or PA views;

(8) sternum radiographs; and

(9) radiographic procedures which utilize contrast media;

(10) pediatric radiography, excluding extremities, unless performed by an LMRT with the appropriate category. Pediatric studies must be performed with radioprotection so that proper collimation and shielding is utilized during all exposures sequences during pediatric studies. If an emergency condition exists which threatens serious bodily injury, protracted loss of use of a bodily function or death of a pediatric patient unless the procedure is performed without delay, or if other extenuating circumstances deemed by the practitioner exist, a pediatric radiographic procedure is also excluded. The emergency condition or extenuating circumstance must be documented by the ordering practitioner in the patient's clinical record and the record must document that a regularly scheduled MRT, LMRT, RN or physician assistant is not reasonably available to perform the procedure.

(d) Performance of a hazardous procedure by an LMRT. An LMRT may perform a radiologic procedure listed in subsection (c) of this section only if the procedure is within the scope of the LMRT's certification, as described in §140.507(f) of this title (relating to Types of Certificates and Applicant Eligibility).

(e) Performance of a dangerous or hazardous procedure by a practitioner. This section does not authorize a practitioner to perform a radiologic procedure which is outside the scope of the practitioner's license.

(f) Dental radiography. This section does not apply to a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography.

(g) Mammography. In accordance with the Health and Safety Code, §§401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT who meets the qualifications set out in 25 TAC Chapter 289 of the Radiation Control Program rules relating to mammography. Mammography shall not be performed by an LMRT, an NCT, or any other person.

(h) Student performance of dangerous or hazardous procedures. The procedures identified in this section are not considered dangerous and hazardous for purposes of §601.056(a) of the Act if the person performing the procedures is a student enrolled in a program which meets the minimum standards adopted under §601.056 of the Act and if the person is performing radiologic procedures in an academic or clinical setting as part of the program. Therefore, such students may perform these procedures in such settings. Students may not perform procedures in an employment setting.

§140.517. Registered Nurses and Physician Assistants Performing Radiologic Procedures.

(a) An appropriately trained registered nurse (RN) or physician assistant (PA) may perform the following procedures:

(1) administration of radio-pharmaceuticals, performed by an RN or physician assistant who is appropriately trained as authorized by the department's Radiation Control Program for licensure of radioactive materials and who meets the training requirements identified in §140.518 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §140.522 of this title (relating to Alternate Training Requirements); administration does not include preparation or dispensing as regulated under the authority of the Texas State Board of Pharmacy.

(2) fluoroscopy by an RN or physician assistant who assists in the performance of the procedure under the direct supervision of a practitioner.

(3) spine radiography lumbar oblique views performed by an RN or physician assistant who performs the procedure under the supervision of a practitioner.

(4) shoulder girdle radiographs--AP and lateral shoulder views, AP clavicle and AP scapula performed by an RN or physician assistant who performs the procedure under the direct supervision of a practitioner.

(5) sternum radiographs performed by an RN or physician assistant under the direct supervision of a practitioner; and

(6) radiographic procedures which utilize contrast media, performed by an RN or physician assistant who assists in the performance of the procedure under the supervision of a practitioner.

(7) pediatric radiography performed by an RN or physician assistant who is appropriately trained, as set out in §140.518 or §140.522 of this title.

(b) Appropriately trained in this section means an RN or physician assistant must be trained under §140.518 of this title or §140.522 of this title, or have been approved to perform radiologic procedures under a hardship exemption granted under §140.520 of this title (relating to Hardship Exemptions), in addition to performing the listed procedure under the direction and supervision of a practitioner. Subsections (a)(2), (a)(5), and (a)(6) of this section shall not be construed to authorize an RN or physician assistant to independently perform fluoroscopy or procedures utilizing contrast media.

§140.518. Mandatory Training Programs for Non-Certified Technicians.

(a) General. This section sets out the minimum standards for approval of mandatory training programs, as required by the Medical Radiologic Technologist Certification Act (Act), §601.201, which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Individuals who complete an approved training program may not use that training toward the educational requirements for a general or limited certificate. Before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(2)(A) - (C) of this section, and at least one unit in subsection (d)(3)(A) - (G) of this section.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. No credit will be given for training completed by self-directed study or correspondence.

(c) Instructor qualifications.

(1) An instructor(s) shall have education in accordance with §140.509(a) of this title (relating to Standards for the Approval of Curricula and Instructors) and not less than six months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists;

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; or

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas Board of Chiropractic Examiners, Texas Medical Board, or Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, the United States Department of Health and Human Services.

(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program that is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements. In order to successfully complete a program, each student must complete the following minimum training:

(1) prerequisites recommended for admission include high school graduation or general equivalency diploma; certified medical assistant; graduation from a medical assistant program; or six months full time patient care experience, otherwise determined by the practitioner.

(2) courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others--22 classroom hours;

(B) image production and evaluation--24 classroom hours; and

(C) radiographic equipment maintenance and operation--16 classroom hours which includes at least 6 hours of quality control, darkroom, processing, and Texas Regulations for Control of Radiation; and

(3) one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (5 views: Caldwell, Townes, Waters, AP/PA, and lateral)--10 classroom hours;

(B) chest--8 classroom hours;

(C) spine--8 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media--4 classroom hours;

(E) upper extremities--14 classroom hours;

(F) lower extremities--14 classroom hours; and/or

(G) podiatric--5 classroom hours.

(e) Application procedures for training programs. An application shall be submitted to the department at least 30 days prior to the starting date of the training program. Official application forms are available from the department and must be completed and signed by an approved instructor, who shall be designated as the training program director. The training program director shall be responsible for the curriculum, the instructors, and determining whether students have successfully completed the training program.

(1) Official application forms must be executed in the presence of a notary public and shall be accompanied by the application fee in accordance with §140.504 of this title (relating to Fees). Photocopied signatures will not be accepted.

(2) Application forms and fees shall be mailed to the address indicated on the application materials. The department is not responsible for lost, misdirected, or undeliverable application forms. An application received without the application fee will be returned to the applicant.

(f) Application materials. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

(5) the location, mailing address, phone and facsimile numbers of the program;

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach, and a list of management and administrative personnel and any practitioners who will participate in conducting the program;

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured pre-planned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32. If approval has been granted by the Texas Higher Education Coordinating Board, a letter or other documentation is not necessary; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (d) of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §140.516 of this title (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, MRT or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation instruments and grades for not less than five years. Such records shall be made available upon request by the department or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the department within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the department to determine compliance with this section.

(g) Application approval.

(1) The administrator shall be responsible for reviewing all applications for training program approval. The administrator shall approve any application which is in compliance with this section. A letter of approval shall be issued for a period of one year.

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The training program director shall be notified in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(3) If approval is proposed to be denied, the training program director shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within ten days of the training program director's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(h) Application processing. The department shall use the same process as described in §140.506(e) of this title (relating to Application Requirements and Procedures for Examination and Certification), except the time periods are as follows:

(1) letter of acceptance--30 working days;

(2) letter of application deficiency--30 working days;

(3) letter of approval--42 working days; and

(4) letter of denial of approval--42 working days.

(i) Renewal.

(1) The training program director shall be responsible for renewing the approval of the training program on or before the anniversary date of the initial application.

(2) The department shall send a renewal notice to the training program at least 60 days prior to the anniversary date. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form and fee in accordance with §140.504 of this title are postmarked or delivered to the department on or before the anniversary date.

(4) Failure to submit the renewal form and renewal fee in accordance with §140.504 of this title by the deadline will result in the expiration of the training program's approval.

(5) A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify, or cause the notification of currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(6) The training program may reapply for approval and meet the then current requirements for approval under this section.

§140.519. Registry of Non-Certified Technicians.

(a) General. This section sets forth the rules for administering the registry of non-certified technicians performing radiologic procedures, established in accordance with the Act, §601.202. The department's registry is to provide a mechanism for consumers or employers to ascertain or verify that a person performing radiologic procedures has complied with the Act, §601.201, by successfully completing a training program in accordance with §140.518 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §140.522 of this title (relating to Alternate Training Requirements).

(b) Information on the application for the registry. The application shall include the information as follows for each person on the registry:

(1) full name;

(2) current mailing address;

(3) place of employment, including address, city and state;

(4) date of birth;

(5) social security number;

(6) gender;

(7) a copy of the training program certificate with the name and location of the training program and the date of successful completion of the training program approved in accordance with §140.518 of this title; and

(8) the types of radiologic procedures covered in the person's training program. A person listed on the registry may not perform a dangerous or hazardous procedure as set out in §140.516 of this title (relating to Dangerous or Hazardous Procedures).

(c) Initial placement on the registry. In order to be listed on the registry for the first time, the information described in subsection (b) of this section shall be submitted to the department once the applicant has completed the training approved under §140.518 or §140.522 of this title.

(d) Renewal of registration.

(1) Each person on the registry shall be responsible for renewing his or her status on the registry prior to the expiration date. Each registrant must complete continuing education as set out in §140.511 of this title (relating to Continuing Education Requirements) in order to renew the registration.

(2) The department shall send a renewal notice to each registrant at least 60 days before the expiration date. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form is postmarked or delivered to the department on or before the expiration date of the registrant's certificate. The renewal form shall include, at a minimum, the person's name, current mailing address, and current place of employment.

(4) If an NCT fails to renew the non-certified technician registration by the expiration date, the NCT can renew by submitting a late renewal form and fee to the department within one year of the expiration date of registrant's certificate. If renewal is not complete within one year, the person may not renew; but must reapply and meet current requirements.

(5) If an expired non-certified technician registration is lapsed for more than 2 years past the expiration date, the registrant will be required to retake the training program §140.518 or §140.522 of this title and reapply to be listed on the non-certified technician registration.

(e) Changes in name, address or place of employment. A person listed on the registry is responsible for submitting changes in name, address or place of employment to the department, in writing, within 30 days of any change.

(f) Employer responsibility. If a person performing radiologic procedures is not a medical radiologic technologist, limited medical radiologic technologist or is not registered under this section, the employer shall be responsible for determining whether the person performing radiologic procedures is in compliance with §140.518 or §140.522 of this title. This subsection does not apply to a hospital, federally qualified health center, or practitioner granted a hardship exemption by the department within the previous 12-month period.

(g) Complaints. Complaints regarding persons on the registry may be submitted in writing to the Department of State Health Services, Professional Licensing and Certification Unit, Complaints Management and Investigation Section, 1100 West 49th Street, Austin, Texas 78756-3183.

§140.520. Hardship Exemptions.

(a) General.

(1) A hospital, federally qualified health center (FQHC) or practitioner may apply to the department for a hardship exemption from employing an MRT, LMRT, or NCT.

(2) The applicant must demonstrate a hardship as described in subsection (b)(5) of this section in employing an MRT, LMRT, or NCT.

(3) The applicant shall not allow a person who is not an MRT, LMRT, or NCT to perform a radiologic procedure until the department grants a hardship exemption.

(4) A hardship exemption granted by the department does not constitute licensure, certification, registration, or authorization to perform a dangerous or hazardous radiologic procedure or mammography.

(b) Required application materials.

(1) The applicant must apply for a hardship on the forms prescribed by the department. The date of application shall be the date the application and application fee is postmarked. If there is no visible postmark, or if the application is hand-delivered, the application date shall be the date the department receives the application.

(2) The application must be accompanied by documentation clearly indicating that the applicant is a licensed hospital, FQHC or licensed practitioner. A copy of the current hospital license, certificate of qualification issued to the FQHC, or current license of the practitioner shall be acceptable documentation.

(3) If the application is from a hospital or FQHC, the administrator or chief executive officer of the hospital or FQHC must sign the application form. If the applicant is a practitioner, the practitioner must sign the application form.

(4) The application must include a list of the person(s) performing radiologic procedures who is not an MRT, LMRT, or NCT.

(5) The application shall be accompanied by one or more of the following:

(A) if the applicant is unable to attract or retain an MRT or LMRT, a sworn affidavit describing the reasons the applicant is unable attract and retain an MRT or LMRT at a comparable salary for the area, the applicant's attempts to attract and retain an MRT or LMRT, evidence of recruiting efforts during the 30 day period prior to application for the hardship exemption, and copies of advertisements to hire an MRT or LMRT;

(B) if the applicant is located more than 200 highway miles from the nearest school of medical radiologic technology approved in accordance with §140.509 of this title relating to (Standards for the Approval of Curricula and Instructors), a sworn affidavit describing in narrative form the physical address of the nearest school of medical radiologic technology; the physical address of the applicant hospital, FQHC, or primary practice location of the practitioner; and the actual distance in highway miles between the school and the applicant hospital, FQHC, or practitioner's primary practice. The applicant shall include a map of the area clearly indicating the locations of each entity;

(C) if the nearest school of medical radiologic technology approved in accordance with §140.509 of this title has a waiting list of school applicants due to a lack of faculty or space, a sworn affidavit from the applicant indicating that admissions to the school are pending because of a lack of faculty or space;

(D) if the applicant's need for graduates in medical radiologic technology exceeds the number of graduates from the nearest school of medical radiologic technology approved in accordance with §140.509 of this title, a sworn affidavit from the applicant indicating that the number of graduates from the nearest school does not meet the applicant's needs for radiologic technologists;

(E) if emergency conditions have occurred during the 90 days prior to making application for the hardship exemption, a sworn affidavit from the applicant describing the emergency conditions, the hardship(s) the emergency conditions have created and how long the hardship(s) is anticipated to continue. For the purposes of this subparagraph, emergency conditions may include a disaster, epidemic, or other catastrophic event;

(F) if the applicant uses only a hand-held fluoroscope with a maximum operating capability of 65 kilovolts and 1 milliampere, or a similar type of x-ray unit for imaging upper extremities only, at the location indicated on the application form and the applicant believes that the radiation produced by the radiographic equipment represents a minimal threat to the patient and the operator of the equipment, the following is required to be submitted:

(i) a copy of the current certificate of registration for radiation machine issued by the department; and

(ii) a sworn affidavit describing the equipment used; the types of radiographs performed; the training completed by the operator of the equipment within the 24-month period prior to application or reapplication for a hardship exemption; the date(s) the training was completed by the operator; the radiation safety measures taken for the patient, operator and others; the level or amount of supervision provided by an MRT or a practitioner(s) to the operator while performing the radiographic procedure; and the equipment manufacturer's specifications for the diagnostic radiographic equipment utilized at the location indicated on the application form, including the maximum operating capability.

(6) All application materials and information are subject to verification by the department.

(7) The department shall send a written notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of the written notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(c) Application approval.

(1) The department shall be responsible for reviewing all applications. The department shall approve any application which is in compliance with this section and which properly documents applicant eligibility.

(2) If granted by the department, a letter of exemption shall be issued for a period of one year.

(d) Disapproved applications.

(1) The department shall disapprove the application if the applicant has not met the application requirements set out in this section or has failed or refused to complete or submit any form or documentation required by the department to verify the eligibility for the exemption.

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval. The applicant may appeal the decision to the department by submitting a written request within 10 days after receipt of the written notice of the reason(s) for the disapproval.

(3) An applicant whose application has been disapproved under this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a new application and supporting information. The applicant may reapply for an exemption any time the basis for the exemption application changes.

(e) Application processing. The department shall use the same process as described in §140.506(e) of this title (relating to Application Requirements and Procedures For Examination and Certification), except the time periods are as follows:

(1) letter of acceptance--30 working days;

(2) letter of application deficiency--30 working days;

(3) letter of approval--42 working days; and

(4) letter of denial of exemption--42 working days.

(f) Reapplication for hardship exemption.

(1) The hospital, FQHC, or a practitioner must reapply annually for the exemption and meet the then current requirements for a hardship exemption.

(2) A hospital, FQHC, or a practitioner who does not reapply for an exemption shall not allow a person to perform a radiologic procedure unless the person is a practitioner, MRT, LMRT, or NCT.

§140.521. Bone Densitometry Training.

(a) The provisions of this section do not apply to a person who is certified or registered under the Act, a practitioner, a registered nurse, a physician assistant, or other licensed or certified person who is authorized to operate a bone densitometry unit which utilizes x-radiation.

(b) A person who operates a bone densitometry unit(s) which utilizes x-radiation who is in compliance with this section is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.

(c) A person who operates a bone densitometry unit(s) which utilizes x-radiation must have proof that the person is a certified densitometry technologist in good standing with the International Society for Clinical Densitometry (ISCD), or have successfully completed the ARRT bone density exam or has completed at least 20 hours of training as follows:

(1) 16 hours of specific training using bone densitometry equipment utilized x-radiation, presented by a medical radiologic technologist (MRT) or an equipment applications specialist knowledgeable of the specific equipment to be utilized; and

(2) 4 hours of radiation safety and protection training for the patient, operator and others. The training shall be presented by an MRT or a licensed medical physicist. A person must complete the 4 hours of radiation safety and protection training every 2 years.

(d) Documentation of operator training must be kept on site.

§140.522. Alternate Training Requirements.

(a) General. This section sets out the minimum standards for registered nurses (RNs), physician assistants, podiatric medical assistants (PMAs) and x-ray equipment operators in a physician's office.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an instructor approved by the department. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence. The provisions of this subsection shall not apply to the out of classroom training requirements for podiatric medical assistants and x-ray equipment operators in a physician's offices.

(1) Before an RN or physician assistant performs a radiologic procedure, the RN or physician assistant must complete the hours stated in subsection (d) of this section, or the hours stated in §140.518 of this title (relating Mandatory Training Programs for Non-Certified Technicians).

(2) Before a PMA performs a radiologic procedure, the PMA must complete the hours stated in subsection (e) of this section, or the hours stated in §140.518(d) of this title concerning podiatric radiologic procedures.

(3) Individuals who complete training approved under this section may not use that training toward the educational requirements for a general or limited certificate as set out in §140.507 of this title (relating to Types of Certificates and Applicant Eligibility).

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the department to teach in a training program if the individual meets the requirements of §140.509(g)(1) - (2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements for registered nurses and physician assistants. A training program preparing RNs and physician assistants to perform radiologic procedures shall be designed to build on the health care knowledge base and skills acquired through completion of an educational program that qualifies the person for licensure as an RN or physician assistant. The training shall consist of:

(1) a minimum of 30 hours of coursework that are fundamental to diagnostic radiologic procedures covering all of the following items:

(A) radiation safety and protection for the patient, self, and others--10 hours;

(B) radio-pharmaceutical administration--radiation safety--16 hours

(C) radiologic equipment--10 hours;

(D) image production and evaluation--10 hours; and

(2) one or more of the following units of instruction in radiologic procedures:

(A) chest and abdomen (non-pediatric)--8 hours;

(B) spine (non-pediatric)--10 hours;

(C) skull (non-pediatric)--8 hours;

(D) extremities (including pediatric)--8 hours; and

(3) if the RN or physician assistant will perform pediatric radiologic procedures other than extremities, a minimum of 2 classroom hours for each of the areas identified in paragraph (2)(A) - (C) of this subsection.

(e) Training requirements for podiatric medical assistants PMAs.

(1) In order to successfully complete a program, a PMA must complete the following training:

(A) radiation safety and protection for the patient, self, and others--5 classroom hours and 5 out of classroom hours;

(B) radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance--1 classroom hour and 2 out of classroom hours;

(C) podiatric radiologic procedures, imaging production and evaluation--1 classroom hour and 4 out of classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects--1 classroom hour and 1 out of classroom hour.

(2) Successful completion of PMA training allows the PMA to perform radiologic procedures only under the instruction or direction of a podiatrist.

(3) The out of classroom training hours require successful completion of learning objectives approved by the department as verified by the supervising podiatrist.

(f) Application procedures for training programs. The department shall use the same process as described in §140.518(e), (f), (g), (h) and (i) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802460
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§143.1 - 143.20

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§143.1 - 143.20, concerning the regulation and certification of medical radiologic technologists.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 143.1 - 143.20 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is proposing to repeal the existing sections and adopt the rules in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation. The proposed repeals and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC, Chapter 140, Health Professions Regulation.

The new rules in 25 TAC, §§140.501 - 140.522, transfer and update existing language. Many sections were transferred with no modification. New language is added in some sections in order to clarify the rules for medical radiologic technologists, health care practitioners and professionals, and consumers. Additionally, the rules require continuing education for non-certified technicians.

SECTION-BY-SECTION SUMMARY

The repeal of §§143.1 - 143.20 is necessary to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC Chapter 140, Health Professions Regulation.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Individual certificate holders and registrants are required to comply with the sections.

There may be an impact to individuals who are required to comply with the sections as proposed. If an individual is a registered non-certified technician, the person will be required to complete six hours of continuing education every two years in order to renew the registration. It is estimated that the cost to each non-certified technician will be $150 biennially. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the certification and regulation of medical radiologic technologists.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the pubic health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Program Director, Medical Radiologic Technologists Certification Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617 or by email to mrt@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §604.052 and §604.053, which authorizes the adoption of rules for the regulation of medical radiologic technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of these rules implements Government Code, §2001.039.

The proposed repeals affect the Occupations Code, Chapter 604; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§143.1. Purpose and Scope.

§143.2. Definitions.

§143.3. Medical Radiologic Technologist Advisory Committee.

§143.4. Fees.

§143.5. Applicability of Chapter; Exemptions.

§143.6. Application Requirements and Procedures For Examination and Certification.

§143.7. Types of Certificates and Applicant Eligibility.

§143.8. Examinations.

§143.9. Standards for the Approval of Curricula and Instructors.

§143.10. Certificate Issuance, Renewals, and Late Renewals

§143.11. Continuing Education Requirements.

§143.12. Changes of Name and Address.

§143.13. Certifying Persons with Criminal Backgrounds.

§143.14. Disciplinary Actions.

§143.15. Advertising or Competitive Bidding.

§143.16. Dangerous or Hazardous Procedures.

§143.17. Mandatory Training Programs for Non-Certified Technicians.

§143.18. Registry of Non-Certified Technicians.

§143.19. Hardship Exemptions.

§143.20. Alternate Training Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
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Department of State Health Services
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CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §157.132

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §157.132, concerning the disbursement of funds for uncompensated trauma care and emergency medical services (EMS), generated by photographic traffic signal enforcement.

BACKGROUND AND PURPOSE

The proposed rule is necessary to comply with Senate Bill 1119, 80th Legislature, 2007, which added Health and Safety Code, Chapter 782, and requires the Executive Commissioner to use money appropriated from the regional trauma account that was created as a dedicated account in the general revenue fund of the state treasury as a result of the implementation of a photographic traffic signal enforcement system and the use of a percentage of the monies collected to help fund trauma facilities and EMS to fund uncompensated care provided by designated trauma facilities and county and regional EMS located in the area served by the trauma service area (TSA) regional advisory council (RAC) that serves the local authority submitting money.

SECTION-BY-SECTION SUMMARY

The new rule describes the formula for disbursement of monies for designated trauma facilities, EMS providers, and RACs that serve the local authority submitting the money under Transportation Code, §707.008. The Regional Trauma Account is a dedicated account in the general revenue fund of the state treasury.

In any fiscal year, 96% of the money is appropriated from the Regional Trauma Account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department; 2% of the money is appropriated from the Regional Trauma Account for county and regional EMS; 1% of the money is appropriated from the Regional Trauma Account for distribution to the 22 TSA RACs; and 1% of the money is appropriated from the Regional Trauma Account to fund administrative costs of the Health and Human Services Commission.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, determined that if funding is appropriated for each year of the first five years that the section will be in effect, there will be positive fiscal implications to state and local governments as a result of enforcing or administering the section as proposed concerning the EMS/Trauma System. If appropriated, the department anticipates that the proposed new rule will increase funding available to hospitals, EMS providers and RACs thus strengthening the EMS/Trauma System. However, the fiscal impact on the state and units of local governments as a result of enforcing or administering the section as proposed cannot be definitively estimated because it is unknown how many cameras might be installed for traffic enforcement, how many municipalities would install them, at what schedule, and at what allowable expense, among other factors. There is an anticipated cost associated with the new rule resulting from the need to provide technical assistance, contract development and contract management to the designated trauma facilities, licensed EMS providers, and RACs regarding the availability and distribution of funds from the newly created Regional Trauma Account. One percent of the fund appropriated from the Regional Trauma Account is dedicated to the Health and Human Services Commission.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is the increased funding availability to designated trauma facilities, licensed EMS providers, and RACs, thereby strengthening the state EMS/Trauma System.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Steve Janda, Office of EMS/Trauma Systems Coordination, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, 1100 West 49th Street, Austin, Texas 78714-9347, (512) 834-6700 or by email to steve.janda@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Health and Safety Code, Chapters 773 and 1001; and Government Code, Chapter 531.

§157.132. Regional Trauma Account.

(a) Definitions. The following words and terms, when used in this section, shall have the meanings as defined in §157.122 of this title (relating to Trauma Services Areas), §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems), §157.131 of this title (relating to Designated Trauma Facility and Emergency Medical Services Account), and the following meanings.

(1) Local authority--A county, municipality, or other local entity as defined in Transportation Code, §541.002.

(2) City of licensure--The city in which an ambulance provider is licensed by the Department of State Health Services (department).

(3) Regional Trauma Account--An account established under Health and Safety Code, Chapter 782.

(4) Qualified hospital--A hospital determined to be eligible for the hospital allocation under the requirements in subsection (c) of this section.

(b) Allocations. The hospital allocation shall be 96%, emergency medical services (EMS) allocation shall be 2%, and the trauma service area (TSA) regional advisory councils' (RAC) allocation shall be 1% of the funds appropriated from the account. The money un-

der this subsection shall be distributed in proportion to the amount deposited to the Regional Trauma Account by the local authority.

(1) Hospital Allocation Distribution Process. The department shall distribute funds directly to qualified hospitals from the hospital allocation to subsidize a portion of uncompensated trauma care provided. Funds distributed from the hospital allocations shall be made based on:

(A) the percentage of the hospital's uncompensated trauma care cost in relation to total uncompensated trauma care cost reported by qualified hospitals that year in the TSA in which the local authority submitting money under Transportation Code, §707.008, is located; and

(B) availability of funds deposited into the Regional Trauma Account.

(2) EMS Allocation Distribution Process. The department shall contract with each eligible RAC to distribute the EMS allocation to eligible EMS providers. Prior to distribution of the local authority's share to eligible EMS providers, the RAC shall submit a distribution proposal, to the department for approval.

(A) The EMS allocation shall be distributed directly to eligible recipients without any reduction in the total amount allocated by the department and shall be used as an addition to current county EMS funding of eligible recipients, not as a replacement.

(B) The department shall evaluate each RAC's distribution plan based on the following:

(i) fair distribution process to all eligible providers;

(ii) needs of the EMS providers; and

(iii) evidence of consensus opinion for eligible entities.

(C) A RAC opting to use a distribution plan from the previous fiscal year shall submit, to the department, a letter or email of intent to do so.

(D) Eligible EMS providers may opt to pool funds or contribute funds for a specified RAC purpose.

(3) TSA Allocation Distribution Process. The department shall contract with eligible RACs to distribute the TSA allocation. Prior to distribution of the TSA allocation, the RAC shall submit a budget proposal to the department for approval. The department shall evaluate each RAC's budget according to the following:

(A) all funds received by the RAC, including funds not expended in the previous fiscal year must be accounted for;

(B) no ineligible expenses allowed;

(C) appropriate mechanism is used by RAC for budgetary planning; and

(D) funding is identified by budget categories.

(c) Eligibility Requirements. To be eligible for funding from the account, all potential recipients (EMS Providers, RACs and hospitals) must maintain active involvement in regional system development. Potential recipients must also meet requirements for reports of expenditures from the previous fiscal years.

(1) Hospital Eligibility. To be eligible for funding from the hospital allocation, a hospital must be a department designated trauma facility and licensed in the area served by the trauma service area RAC in which the local authority submitting money into the Regional Trauma Account is located.

(A) To receive funding from the hospital allocation, an application must be submitted within the time frame specified by the department and include the following:

(i) name of facility;

(ii) location of facility including mailing address, city and county;

(iii) Texas Provider Identifier (TPI number) or accepted federal identification number.

(B) The application must be signed and sworn to before a Texas Notary Public by the chief financial officer, chief executive officer and the chairman of the facility's board of directors.

(C) A copy of the application shall be distributed by Level I, II, or III facilities to their trauma medical director and trauma program manager and by Level IV facilities to the physician director and the trauma program manager.

(D) Additional information may be requested at the department's discretion.

(E) A qualified hospital in receipt of funding from the hospital allocation that fails to maintain its designation must return an amount as follows to the account:

(i) 1 to 60 days expired/suspended designation during any given state biennium: 0% of the facility's hospital allocation for the state biennium when the expiration/suspension occurred;

(ii) 61 to 180 days expired/suspended designation during any given state biennium: 25% of the facility's hospital allocation for the state biennium when the expiration/suspension occurred plus a penalty of 10%;

(iii) greater than 181 days expired/suspended designation during any given state biennium: 100% of the facility's hospital allocation for the state biennium when the expiration/suspension occurred plus a penalty of 10%; and

(iv) the department may grant an exception to this subparagraph of this paragraph if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(F) A facility must comply with subparagraphs (A) - (E) of this paragraph and have no outstanding balance owed to the department prior to receiving any disbursements from the Regional Trauma Account.

(2) EMS Eligibility. To be eligible for funding from the EMS allocation, an EMS provider must maintain provider licensure as described in §157.11 of this title (relating to Requirements for an EMS Provider License), and meet the following requirements:

(A) provide EMS and/or emergency transfers in the TSA in which the local authority submitting money into the Regional Trauma Account is located;

(B) city of licensure must be within the TSA in which the local authority submitting money into the Regional Trauma Account is located or the EMS provider must be contracted to provide EMS and/or emergency transfers in the TSA in which the local authority submitting money into the Regional Trauma Account is located; and

(C) be an active member of the RAC for the TSA; and also

(i) meet that RAC's definition of participation;

(ii) demonstrate utilization of the RAC regional protocols regarding patient destination and transport; and

(iii) demonstrate active participation in the regional system performance improvement (PI) program.

(3) RAC Eligibility. To be eligible for funding from the TSA allocation, a RAC must:

(A) be officially recognized by the department as described in §157.123 of this title and have a local authority within its TSA that deposits revenue into the Regional Trauma Account;

(B) be incorporated as an entity that is exempt from federal income tax under §501(a) of the United States Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code;

(C) submit documentation of ongoing system development activity and future planning;

(D) have demonstrated that a regional system PI process is ongoing by submitting to the department the following:

(i) lists of committee meeting dates and attendance rosters for the RAC's most recent fiscal year;

(ii) committee membership rosters which include each member's organization or constituency; or

(iii) lists of issues being reviewed in the system PI meetings; and

(E) submit all required EMS allocation eligibility items addressed in paragraph (2)(C)(i) - (iii) of this subsection.

(d) Calculation Methods. Calculation of the hospital allocation, the EMS allocation and the RAC share of the TSA allocation will be formulated by the RAC for each respective TSA based on the total amount of revenue deposited into the Regional Trauma Account from the local authorities in each TSA.

(1) Hospital allocation.

(A) There will be one annual application process from which all distributions from the hospital allocation in a given fiscal year will be made. The department will notify all qualified hospitals at least 90 days prior to the due date of the annual application. Based on the information provided in the application, each facility shall receive:

(i) an equal amount, with an upper limit of $50,000, from up to 15% of the hospital allocation; and

(ii) an amount for uncompensated trauma care as determined in subparagraphs (B) - (C) of this paragraph, less the amount received in clause (i) of this subparagraph.

(B) If the total cost of uncompensated trauma care exceeds the amount appropriated from the account, minus the amount referred to in subparagraph (A)(i) of this paragraph, the department shall allocate funds based on a facility's percentage of uncompensated trauma care costs in relation to the total uncompensated trauma care cost reported by qualified hospitals in their respective trauma service area for that fiscal year.

(C) The hospital allocation formula for Level I, II, III and IV trauma facilities shall be: ((the facility's reported costs of uncompensated trauma care) minus (any collections received by the hospital for any portion of their uncompensated care previously reported for the purposes of this section) divided by (the total reported cost of uncompensated trauma care by all qualified hospitals that year in their respective trauma service area)) multiplied by (total money deposited in the Regional Trauma Account by the local authorities in the area served by their trauma service area RAC minus the amount distributed in subparagraph (A)(i) of this paragraph).

(D) For purposes of paragraph (1) of this subsection, the reporting period of a facility's uncompensated trauma care shall apply to costs incurred during the preceding calendar year.

(E) Hospitals should have a physician incentive plan that supports the facility's participation in the trauma system.

(2) EMS allocation. An eligible EMS provider's share of the EMS allocation shall be based on the amount of revenue deposited into the Regional Trauma Account for the TSA in which the local authority submitting money is located.

(3) TSA allocation. A RAC's share of the TSA allocation shall be based on the amount of revenue deposited into the Regional Trauma Account for the TSA in which the local authority submitting money is located.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802448
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§229.21, 229.421, 229.423 - 229.425, and 229.427 - 229.429 concerning charitable drug donations and the licensing of wholesale distributors of prescription drugs, including good manufacturing practices.

BACKGROUND AND PURPOSE

The amendments to §§229.21, 229.421, 229.423 - 229.425, and 229.427 - 229.429 are necessary to implement a legislative change to the Texas Health and Safety Code. The Texas Health and Safety Code, Chapter 431, was amended by Senate Bill (SB) 943 and SB 1896, 80th Legislature, 2007, to address charitable drug donations and new challenges to the integrity of the prescription drug distribution system as a result of the threat of counterfeit and adulterated drugs by requiring more stringent wholesaler and pedigree licensing. Current law requires wholesaler licensing and tracking drugs through commerce by means of "pedigree" documentation only in certain instances. Texas law requires further change to conform state law to newly clarified Food and Drug Administration (FDA) requirements in the Prescription Drug Marketing Regulations, 21 Code of Federal Regulations, Subchapters 203 and 205.

SECTION-BY-SECTION SUMMARY

The amendment to §229.21 changes the definition of charitable medical clinic, and adds a new definition for the community pharmaceutical access program. These changes will allow certain pharmacies to participate in the drug donation process. Also,

the definition of wholesale distribution was amended to conform to the definition in Subchapter W of the rules.

Amendments to §229.421 add definitions of a broker, co-licensed product partner, drop shipment, manufacturer's exclusive distributor, normal distribution channel, pharmacy warehouse, third-party logistics provider, and verification. Additional amendments to the definitions of a manufacturer and wholesale distribution are necessary to conform with the amendments to Texas Health and Safety Code, Chapter 431.

Amendments to §229.423 expand the exemptions from licensing to achieve compliance with Texas Health and Safety Code, Chapter 431, and with the new FDA requirements. Amendments to §229.424 clarify the licensing requirements for a designated representative, require a license renewal, including the payment of licensing fees within 30 days of receipt of a renewal notice, and set out the requirements of providing a bond with the application. Licensing procedures were amended in §229.425 to conform to the provisions of Chapter 431 and to delete information no longer required in an application, and applicants will submit a bond to the department.

Licensing fees were amended in §229.427 to consolidate and simplify the categories of licensing, and to ensure that out-of-state licensees pay the same fee as in state licensees. Additionally, a new subsection of §229.427 was added to set out the fees to be paid by manufacturers of medical gases.

Amendments to §229.428 add reasons to refuse, suspend or revoke a license, the violation of the prohibited acts section of Texas Heath and Safety Code, Chapter 431, as well as the furnishing of false or fraudulent information in an application. If a licensee no longer meets the qualifications for obtaining a license, the license may be suspended or revoked.

Amendments to §229.429 clarify the requirements of returns of prescription drugs, and set out the requirements for those returns to be exempt from the tracking requirements of a pedigree. The amendments to this section also clarify when a pedigree is required, what the pedigree must contain, and how a pedigree may be verified.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years §§229.421, 229.423 - 229.425, and 229.427 are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of $720,370 in Fiscal Year 2008, $928,240 in Fiscal Year 2009, $928,240 in Fiscal Year 2010, $1,205,400 in Fiscal Year 2011, and $1,205,400 in Fiscal Year 2012. Regarding §229.21 and §229.428, there will be no fiscal implications to the state or local governments as a result of enforcing or administering these sections as proposed.

Regarding §229.424 and §229.425, there will be increasing costs for the review and pre-licensing inspection of applicants. The new information to be reviewed and verified and the addition of roughly 1300 pre-licensing inspections will require additional staff. Regarding §229.429, there will be an effect on state government which is expected to be an increase in inspection time for review of pedigrees, while there will be a corresponding decrease in the number of licensees who will be unable to obtain a pedigree. The effect on state government will be an increase in costs to the state of $913,282 in Fiscal Year 2008, $908,686 in Fiscal Year 2009, $908,686 in Fiscal Year 2010, $908,686 in Fiscal Year 2011, and $908,686 in Fiscal Year 2012. The increased costs to the state will be recovered by increasing the licensing fees. Implementation of §§229.421, 229.423 - 229.425, 229.427, and 229.429 will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be a 23% increase in fees which will be from $124 to $403 for a two-year license, depending upon each firm's gross annual sales of all drugs. Additional requirements for a bond or equivalent security as required in §229.424 will add costs to small and micro-businesses. The cost of the bond or security cannot be determined, because various vehicles for providing the required security may be accepted. Pedigrees for prescription drugs in §229.429 must be provided and must be verified before sales can take place. The cost of meeting this requirement will vary, depending on the number and type of drugs distributed.

ECONOMIC IMPACT STATEMENT

The new regulations in §229.429 require documentation (pedigree) of all purchases of prescription drug products back to the manufacturer of the drug. The regulations require each prior transaction to be verified by the purchaser before being passed along to the next purchaser. Firms interviewed have stated that they will have to hire additional staff to prepare and/or verify pedigrees. Employee salaries, labor costs, and sales figures are not available to department staff for evaluation. Firms will eventually be required to purchase electronic track and trace equipment (tags, readers, scanners) to facilitate the passing of electronic pedigrees, which are a pending requirement under federal law. Additional staff and equipment purchases will increase the cost of doing business. The cost of electronic track and trace technology has not been finalized since it is still in the development phase, but it is anticipated that such technology will be expensive to implement. There is no anticipated negative impact on local employment.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, §2006.002, requires the agency to consider using regulatory methods that accomplish the objectives of the rules while minimizing the adverse impacts on small business, if consistent with the health, safety, and environmental and economic welfare of the state. The proposal sets out statutory requirements for engaging in the wholesale distribution of drugs, and additionally follows the applicable requirements of the federal Prescription Drug Marketing Regulations found at 21 Code of Federal Regulations, Subchapters 203 and 205. Because the department is required to adopt as rules the specific standards and procedures mandated by SB 943, 80th Legislature, 2007, the mandated standards are *per se* consistent with the health, safety, or environmental and economic welfare of the state. Therefore, other methods to accomplish the objective of the rules would violate state and federal law.

PUBLIC BENEFIT

Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of administering and enforcing §§229.21, 229.421, 229.423 - 229.425, and 229.427 - 229.429 is to reduce the possibility of

diversion of prescription drugs, and to reduce the likelihood that counterfeit drugs are introduced into commerce.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce the risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or public health and safety of a state or sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2001.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Karen Tannert, R.Ph., M.P.H., Drugs and Medical Devices Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, P.O. Box 149347, Mail Code 1875, Austin, Texas 78714-9347, (512) 834-6770, extension 2350, or by email to Karen.Tannert@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER B. DONATION OF UNUSED DRUGS

25 TAC §229.21

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §431.241, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules to enforce the Texas Food, Drug and Cosmetic Act; and Government Code §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.21. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Charitable medical clinic--A clinic, including a licensed pharmacy that is a community pharmaceutical access program provider, that provides medical care or drugs without charge or for a substantially reduced charge, complies with the insurance requirements of Civil Practice and Remedies Code, Chapter 84, and is exempt from federal income tax under Internal Revenue Code of 1986, §501(a) by being listed as an exempt organization in §501(c)(3) or (4) of the Internal Revenue Code, and is operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.

(3) Community pharmaceutical access program--A program offered by a licensed pharmacy under which the pharmacy assists financially disadvantaged person to access prescription drugs at no charge or at a substantially reduced charge.

(4) [~~(3)~~] Department--The [~~Texas~~] Department of State Health Services.

(5) [~~(4)~~] Dispense--To prepare, package, compound, or label in the course of professional practice, a prescription drug or device for delivery to an ultimate user or the user's agent under a practitioner's lawful order.

(6) [~~(5)~~] Drug sample--A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug.

(7) [~~(6)~~] Manufacture--The process of preparing, propagating, compounding, processing, packaging, repackaging, labeling, testing, or quality control of a drug or drug product, but does not include compounding that is done within the practice of pharmacy and pursuant to a prescription from a practitioner for a patient.

(8) [~~(7)~~] Manufacturer--A person, other than a charitable drug donor, as defined in Civil Practice and Remedies Code, Chapter 82.

(9) [~~(8)~~] Patient assistance program--A qualified program offered by a pharmaceutical manufacturer under which the manufacturer provides drugs to financially disadvantaged persons at no charge or at a substantially reduced cost. The term does not include the provision of a drug as part of a clinical trial.

(10) [~~(9)~~] Person--An individual, partnership, corporation, or association.

(11) [~~(10)~~] Qualified program--Any program sponsored by a pharmaceutical manufacturer.

(12) [~~(11)~~] Seller--A person, other than a charitable drug donor, as defined in Civil Practice and Remedies Code, Chapter 82, who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption, a product or any component part thereof.

(13) [~~(12)~~] Wholesale distribution--Distribution to a person other than a consumer or patient including, but not limited to, distribution to any person by a manufacturer, repacker, own-label distributor, jobber, private label distributor, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor, drug [~~or~~] wholesaler or distributor, independent wholesale drug trader, specialty wholesale distributor, third party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802465

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER W. LICENSING OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.421, 229.423 - 229.425, 229.427 - 229.429

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §431.241, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules to enforce the Texas Food, Drug and Cosmetic Act; and Government Code §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.421. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Broker--A person engaged in the offering or contracting for wholesale distribution; sale and/or transfer of a prescription drug into, within, or out of Texas; and, who does not take physical possession of the prescription drug.

(5) [~~(4)~~] Change of ownership--A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons; or if any other type of association, the removal, addition, or substitution of a person or persons as a principal of such association.

(6) Co-licensed product partner--One of two or more parties that have the right to engage in the manufacturing or marketing of a prescription drug consistent with the United States Food and Drug Administration's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100 - 293).

(7) [~~(5)~~] Commissioner--Commissioner of the Department of State Health Services.

(8) [~~(6)~~] Department--The Department of State Health Services.

(9) [~~(7)~~] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.

(10) Drop shipment--The sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or by the manufacturer's co-licensed product partner, third-party logistics provider, or exclusive distributor, in which:

(A) the wholesale distributor takes title but not physical possession of the prescription drug;

(B) the wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient; and

(C) the pharmacy, pharmacy warehouse, or other authorized person receives delivery of the prescription drug directly from the manufacturer or the manufacturer's third-party logistics provider or exclusive distributor.

(11) [~~(8)~~] Drug--Articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designated or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any such article. The term does not include devices or their components, parts, or accessories. A food for which a claim is made in accordance with the Federal Act, §403(r), and for which the claim is approved by the U.S. Food and Drug Administration, is not a drug solely because the label or labeling contains such a claim.

(12) [~~(9)~~] Emergency medical reasons--Includes transfers of a prescription drug between a wholesale distributor or pharmacy to alleviate a temporary shortage of a prescription drug arising from delays in or interruption of regular distribution schedules; sales to nearby emergency medical services, i.e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners of drugs for use in the treatment of acutely ill or injured persons; provision of minimal emergency supplies of drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary drugs cannot be obtained; and transfers of prescription drugs by a retail pharmacy to alleviate a temporary shortage.

(13) [~~(10)~~] Federal Act--Federal Food, Drug, and Cosmetic Act, 21 United States Code, et seq., as amended.

(14) [~~(11)~~] Flea market--A location at which booths or similar spaces are rented or otherwise made available temporarily to two or more persons and at which the persons offer tangible personal property for sale.

(15) [~~(12)~~] Labeling--All labels and other written, printed, or graphic matter:

(A) upon any drug or any of its containers or wrappers; or

(B) accompanying such drug.

(16) [~~(13)~~] Manufacturer--A person who manufactures, prepares, propagates, compounds, processes, packages, or repackages prescription drugs, or a person who changes the container, wrapper, or labeling of any prescription drug package. A person licensed or approved by the United States Food and Drug Administration to engage in the manufacture of drugs or devices, consistent with the federal agency's definition of "manufacturer" under the agency's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100 - 293). The term does not include a pharmacist engaged in compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Occupations Code, §562.154.

(17) Manufacturer's exclusive distributor--A person who holds a wholesale distributor license under this subchapter, who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who takes title to, but does not have general responsibility to direct the sale or disposition of, the manufacturer's prescription drug. A manufacturer's exclusive distributor must be an authorized distributor of record to be considered part of the normal distribution channel.

(18) [~~(14)~~] Misbranded drug--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, §431.112.

(19) [~~(15)~~] Nonprescription drug--Any drug that is not a prescription drug.

(20) Normal distribution channel--A chain of custody for a prescription drug, either directly or by drop shipment, from the manufacturer of the prescription drug, the manufacturer to the manufacturer's co-licensed product partner, the manufacturer to the manufacturer's third-party logistics provider, or the manufacturer to the manufacturer's exclusive distributor, to:

(A) a pharmacy to:

(i) a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(B) an authorized distributor of record to:

(i) a pharmacy to a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(C) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy;

(D) a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy or another designated person authorized by law to dispense or administer the drug to a patient;

(E) a person authorized by law to prescribe a prescription drug that by law may be administered only under the supervision of the prescriber; or

(F) an authorized distributor of record to one other authorized distributor of record to a licensed practitioner for office use.

(21) [~~(16)~~] Person--An individual, corporation, business trust, estate, trust, partnership, association, or any other public or private legal entity.

(22) Pharmacy warehouse--A location for which a person holds a wholesale drug distribution license under this subchapter, that serves as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

(23) [~~(17)~~] Place of business--Each location at which a prescription drug for wholesale distribution is located.

(24) [~~(18)~~] Prescription drug--Any drug (including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices) required by Federal law (including Federal regulation) to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to the Federal Act, §503(b).

(25) [~~(19)~~] Repackage--Repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient or prepackaging in accordance with Occupations Code, §562.154.

(26) [~~(20)~~] Repackager--A person who engages in repackaging.

(27) Third-party logistics provider--A person who holds a wholesale distributor license under this subchapter, who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider must be an authorized distributor of record to be considered part of the normal distribution channel.

(28) Verification--A person who is in possession of a pedigree for a prescription drug must, before distributing the prescription drug, authenticate and certify, in accordance with Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, §431.412 and §431.413, and §229.429(f)(3)(I) of this title, that each transaction listed on the pedigree has occurred.

(29) [~~(21)~~] Wholesale distribution--Distribution of prescription drugs to a person other than a consumer or patient[~~, and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, retail pharmacy that conducts wholesale distribution or wholesaler~~]. The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control, or any transaction or transfer between co-license holders of a co-licensed product [~~of a corporate entity~~];

(B) the sale, purchase, [~~distribution,~~] trade, or transfer of prescription drugs or the offer to sell, purchase, [~~distribute,~~] trade, or transfer a prescription drug for emergency medical reasons, including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, [~~retail pharmacy, chain pharmacy warehouse,~~] or charitable institution in accordance with 21 CFR, §203.23; [~~or~~]

(E) the sale of reasonable quantities [~~delivery~~] by a retail pharmacy of a prescription drug to [~~a patient or a patient's agent under the lawful order of~~] a licensed practitioner for office use;[~~.~~]

(F) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

(G) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

(H) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(I) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor in accordance with the procedures set out in Title 21, Code of Federal Regulations, §203.23(a)(1 - 5) for other returns;

(J) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(K) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in the Internal Revenue Code of 1954, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(L) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, common control means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise; or

(M) The sale, purchase, or trade of blood and blood components intended for transfusion.

(30) Wholesale distributor--A person engaged in the wholesale distribution of prescription drugs, including, but not limited to, a manufacturer, repackager, own-label distributor, private-label distributor, jobber, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor, authorized distributor of record, drug wholesaler or distributor, independent wholesale drug trader, specialty wholesale distributor, third-party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution.

§229.423. Exemptions.

(a) (No change.)

(b) Exemptions from licensing. Persons who engage in the following types of distribution of prescription drugs [~~for use in humans~~] are exempt from the licensing requirements of these sections to the extent that it does not violate provisions of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, or the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483:

(1) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control, or any transaction or transfer between co-license holders of a co-licensed product;

[~~(1) intracompany sales;~~]

(2) the sale, purchase, trade, or transfer of prescription drugs or the offer to sell, purchase, trade, or transfer a prescription drug for emergency medical reasons; including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

[~~(2) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;~~]

(3) the distribution of prescription drug samples by a representative of a manufacturer;

[~~(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law;~~]

(4) the return of drugs by a hospital, health care entity, or charitable institution in accordance with Title 21, Code of Federal Regulations (CFR), §203.23;

[~~(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;~~]

(5) the sale of reasonable quantities by a retail pharmacy of a prescription drug to a licensed practitioner for office use;

[~~(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;~~]

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

[~~(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;~~]

(7) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

[~~(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or~~]

(8) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug; or

[~~(8) the sale, purchase, or trade of blood and blood components intended for transfusion.~~]

(9) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor in accordance with procedures set out in Title 21, CFR, §203.23(a)(1 - 5);

(10) the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(11) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in the Internal Revenue Code of 1954, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(12) the sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, common control means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise; or

(13) the sale, purchase, or trade of blood and blood components intended for transfusion.

(c) (No change.)

(d) Exemption from certain requirements for certain wholesale distributors.

(1) A wholesale distributor that distributes only prescription drugs that are medical gases is exempt from the following requirements: [~~in~~] §229.424(d) and (n) of this title (relating to License [~~Licensure~~] Requirements); §229.425(b)(4) - (5), (c), [~~and~~] (d), and (g) of this title (relating to Licensing Procedures).

(2) A wholesale distributor that is a manufacturer or a third-party logistics provider on behalf of a manufacturer is exempt from the following requirements: §229.424(d) and (n) of this title (relating to License Requirements); and §229.425(b)(4) - (5), (c), (d), and (g) of this title (relating to Licensing Procedures).

§229.424. License Requirements.

(a) General. Except as provided in §229.423 of this title (relating to Exemptions), a person may not engage in the wholesale distribution of prescription drugs in Texas, as defined in §229.421(29) - (30) of this title (relating to Definitions), unless the person has a valid license from the commissioner of the department for each place of business.

(b) - (c) (No change.)

(d) Applicant qualifications. To qualify for the issuance or renewal of a wholesale distributor license under these sections, the designated representative of an applicant or license holder must:

(1) - (5) (No change.)

(6) serve as a designated representative for only one applicant at any one time, except in a circumstance, as the department determines reasonable, in which more than one licensed wholesale distributor is co-located in the same place of business at the same address and the wholesale distributors are members of an affiliated group, as defined by Internal Revenue Code of 1986, §1504;

(7) - (8) (No change.)

(e) - (l) (No change.)

(m) Renewal of license.

(1) The license application as outlined in §229.425 of this title and nonrefundable licensing fees as outlined in §229.427 of this title for each place of business shall be submitted to the department not later than the 30th day after the date the wholesale distributor receives a renewal notification form from the department. [~~prior to the expiration date of the current license.~~] A person who files a renewal application after the expiration date must pay an additional $100 as a delinquency fee.

(2) - (3) (No change.)

(n) Bond.

(1) A wholesale distributor applying for or renewing a license shall submit payable to this state a bond or other equivalent security acceptable to the department, including an irrevocable letter of credit or a deposit in a trust account or financial institution, in the amount of $100,000 payable to this state.

(2) The bond or equivalent security submitted under paragraph (1) of this subsection shall secure payment of any fines or penalties imposed by the department or imposed in connection with an enforcement action by the attorney general, any fees or other enforcement costs, including attorney's fees payable to the attorney general, and any other fees and costs incurred by this state related to that license holder, that are authorized under the laws of this state and that the license holder fails to pay before the 30th day after the date a fine, penalty, fee, or cost is assessed.

(3) The department or this state may make a claim against a bond or security submitted under paragraph (1) of this subsection before the first anniversary of the date a license expires or is revoked under this subchapter.

(4) The department shall deposit the bonds and equivalent securities received under this section in a separate account.

(5) A pharmacy warehouse that is not engaged in wholesale distribution is exempt from the bond requirement under paragraph (1) of this subsection.

(6) A single bond is sufficient to cover all places of business operated by a wholesale distributor in this state.

§229.425. Licensing Procedures.

(a) (No change.)

(b) Contents of license application. The application for licensure as a wholesale distributor of prescription drugs shall be signed and verified, submitted on a license application form furnished by the department, and contain the following information:

(1) the name, full business address, and telephone number of the applicant;

(2) [~~(1)~~] all trade or business names under which the business is conducted;

(3) [~~(2)~~] the address, [~~and~~] telephone number, and name of a contact person for each of the applicant's places of business; [~~of each place of business that is licensed;~~]

(4) [~~(3)~~] the type of business entity: [~~and the name, residence address, and valid driver's license number of:~~]

(A) if a person, the name of the person;

(B) if the business is a sole proprietorship, the name of the proprietor;

(C) if the business is a partnership, the name of the partnership and each of the partners; or

(D) if the business is a corporation, the name of the corporation, the place of incorporation, and the name and title of each corporate office and director;

[~~(A) the proprietor, if the business is a proprietorship;~~]

[~~(B) all partners, if the business is a partnership; or~~]

[~~(C) all principals, if the business is an association;~~]

[~~(4) the date and place of incorporation, if the business is a corporation;~~]

[(5) the names and business addresses of the individuals in an administrative capacity showing:]

[(A) the managing proprietor, if the business is a proprietorship;]

[(B) the managing partner, if the business is a partnership;]

[(C) the officers and directors, if the business is a corporation; or]

[(D) the persons in a managerial capacity, if the business is an association;]

(5) [(6)] the name, date of birth, residence address, telephone number, and any information necessary to complete a criminal history record check on a designated representative of each place of business;

[(7) the state of incorporation, if the business is a corporation;]

(6) [(8)] a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs;

(7) [(9)] the name of the manager, if different from the designated representative, for each place of business;

(8) [(10)] a list of categories which must be marked and adhered to in the determination and paying of the fee; and

(9) [(11)] a statement verified by the applicant's signature that acknowledges the applicant has read, understood, and agrees to abide by the provisions of these sections and those of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

(c) Designated representatives [and managers].

(1) For each person who is a designated representative [and/or a manager] of each place of business, the applicant shall provide the following to the department:

(A) - (D) (No change.)

(E) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license or a criminal proceeding and the nature and disposition of the proceeding;

(F) (No change.)

(G) a written description of any involvement by the person as an officer or director with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;

(H) a description of any misdemeanor or felony offense for which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(I) (No change.)

(J) a photograph of the person taken not earlier than 180 [30] days before the date the application was submitted.

(2) (No change.)

(d) (No change.)

(e) Renewal license application. The renewal application for licensure as a wholesale distributor of prescription drugs shall be made on a license application form furnished by the department. Not later than the 30th day after the date the wholesale distributor receives the form, the wholesale distributor shall identify and state under oath to the department any change in or correction to the information.

(f) (No change.)

(g) Bond. Applicants will submit a bond in a manner prescribed by the department.

§229.427. Licensure Fees.

(a) License fee. Except as provided by §229.423 of this title (relating to Exemptions), no person may operate or conduct business as a wholesale distributor of prescription drugs without first obtaining a license from the department. All applicants for an initial wholesale distributor of prescription drugs license or a renewal license shall pay a licensing fee unless otherwise exempt as provided by subsection (c) of this section. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due license fees and delinquency fees are paid.

(1) In-state and out-of-state wholesale distributors of prescription drugs who are not manufacturers shall pay a two-year license fee based on the gross annual sales of all drugs.

(A) For a wholesale distributor of only [compressed] medical gases [with gross annual drug sales of $0 - $20,000], the fees are:

(i) $830 [$675] for a two-year license;

(ii) $830 [$675] for a two-year license that is [amended] due to a change of ownership; and

(iii) $415 [$337] for a license that is amended during the current licensure period due to minor changes.

(B) For a wholesale distributor with gross annual drug sales of $0 - $1,999,999.99, [$199,999.99,] the fees are:

(i) $1,328 [$1,080] for a two-year license;

(ii) $1,328 [$1,080] for a two-year license that is [amended] due to a change of ownership; and

(iii) $664 [$540] for a license that is amended during the current licensure period due to minor changes.

(C) For a wholesale distributor with gross annual drug sales of $2,000,000 [$200,000] - $19,999,999.99, the fees are:

(i) $2,158 [$1,755] for a two-year license;

(ii) $2,158 [$1,755] for a two-year license that is [amended] due to a change of ownership; and

(iii) $1,079 [$877] for a license that is amended during the current licensure period due to minor changes.

(D) For a wholesale distributor with gross annual drug sales greater than or equal to $20 million, the fees are:

(i) $2,823 [$2,295] for a two-year license;

(ii) $2,823 [$2,295] for a two-year license that is [amended] due to a change of ownership; and

(iii) $1,412 [$1,147] for a license that is amended during the current licensure period due to minor changes.

(2) In-state and out-of-state wholesale distributors of [only compressed] medical gases who are not manufacturers and who also are required to be licensed as a device distributor under §229.439(a) of this title (relating to Licensure Fees), or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing/Registration

Fee and Procedures) shall pay a combined two-year license fee for each place of business. License fees are based on the combined gross annual sales of these regulated products (medical gases, foods, drugs, and/or devices) as follows:[.]

(A) For [a wholesale distributor with] combined gross annual sales of $0 - $199,999.99, the fees are:

(i) $664 [$540] for a two-year license;

(ii) $664 [$540] for a two-year license that is [amended] due to a change of ownership; and

(iii) $332 [$270] for a license that is amended during the current licensure period due to minor changes.

(B) For [a wholesale distributor with] combined gross annual sales of $200,000 - $499,999.99, the fees are:

(i) $996 [$810] for a two-year license;

(ii) $996 [$810] for a two-year license that is [amended] due to a change of ownership; and

(iii) $498 [$405] for a license that is amended during the current licensure period due to minor changes.

(C) For [a wholesale distributor with] combined gross annual sales of $500,000 - $999,999.99, the fees are:

(i) $1,328 [$1,080] for a two-year license;

(ii) $1,328 [$1,080] for a two-year license that is [amended] due to a change of ownership; and

(iii) $664 [$540] for a license that is amended during the current licensure period due to minor changes.

(D) For [a wholesale distributor with] combined gross annual sales of $1 million - $9,999,999.99, the fees are:

(i) $1,661 [$1,350] for a two-year license;

(ii) $1,661 [$1,350] for a two-year license that is [amended] due to a change of ownership; and

(iii) $831 [$675] for a license that is amended during the current licensure period due to minor changes.

(E) For [a wholesale distributor with] combined gross annual sales greater than or equal to $10 million, the fees are:

(i) $2,491 [$2,025] for a two-year license;

(ii) $2,491 [$2,025] for a two-year license that is [amended] due to a change of ownership; and

(iii) $1,246 [$1,012] for a license that is amended during the current licensure period due to minor changes.

(3) In-state and out-of-state manufacturers of only medical gases shall pay a two-year license fee based on the gross annual sales of all prescription drugs as follows:

(A) For gross annual drug sales of $0 - $199,999.99, the fees are:

(i) $1,328 for a two-year license;

(ii) $1,328 for a two-year license that is due to a change of ownership; and

(iii) $664 for a license that is amended during the current licensure period due to minor changes.

(B) For gross annual drug sales of $200,000 - $19,999,999.99, the fees are:

(i) $2,158 for a two-year license;

(ii) $2,158 for a two-year license that is due to a change of ownership; and

(iii) $1,079 for a license that is amended during the current licensure period due to minor changes.

(C) For gross annual drug sales greater than or equal to $20 million, the fees are:

(i) $2,823 for a two-year license;

(ii) $2,823 for a two-year license that is due to a change of ownership; and

(iii) $1,412 for a license that is amended during the current licensure period due to minor changes.

(4) [(3)] In-state and out-of-state [wholesale distributors of prescription drugs who are] manufacturers of prescription drugs shall pay a two-year license fee based on the gross annual sales of all drugs as follows.

(A) For [a wholesale distributor with] gross annual drug sales of $0 - $1,999,999.99, [$199,999.99,] the fees are:

(i) $1,328 [$1,080] for a two-year license;

(ii) $1,328 [$1,080] for a two-year license that is [amended] due to a change of ownership; and

(iii) $664 [$540] for a license that is amended during the current licensure period due to minor changes.

(B) For [a wholesale distributor with] gross annual drug sales of $2,000,000 [$200,000] - $19,999,999.99, the fees are:

(i) $2,158 [$1,755] for a two-year license;

(ii) $2,158 [$1,755] for a two-year license that is [amended] due to a change of ownership; and

(iii) $1,079 [$877] for a license that is amended during the current licensure period due to minor changes.

(C) For [a wholesale distributor with] gross annual drug sales greater than or equal to $20 million, the fees are:

(i) $2,823 [$2,295] for a two-year license;

(ii) $2,823 [$2,295] for a two-year license that is [amended] due to a change of ownership; and

(iii) $1,412 [$1,147] for a license that is amended during the current licensure period due to minor changes.

[(4) Out-of-state wholesale distributors of prescription drugs shall pay a two-year license fee based on all gross annual sales of drugs delivered into Texas.]

[(A) For each wholesale distributor with gross annual drug sales of $0 - $19,999,999, the fees are:]

[(i) $1,350 for a two-year license;]

[(ii) $1,350 for a two-year license that is amended due to a change of ownership; and]

[(iii) $675 for a license that is amended during the current licensure period due to minor changes.]

[(B) For each wholesale distributor with gross annual drug sales of greater than or equal to $20 million, the fees are:]

[(i) $2,025 for a two-year license;]

~~*[(ii)* $2,025 for a two-year license that is amended due to a change of ownership; and]~~

~~*[(iii)* $1,012 for a license that is amended during the current licensure period due to minor changes.]~~

(b) - (c) (No change.)

§229.428. Refusal, Cancellation, Suspension or Revocation of License.

(a) The commissioner may refuse an application for a wholesale distributor of prescription drugs license or may suspend or revoke such a license if the applicant or licensee:

(1) - (4) (No change.)

(5) has violated the Health and Safety Code, §431.021(l)(3), (jj), and (kk) concerning the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(6) - (8) (No change.)

(9) has furnished false or fraudulent information in any application made in connection with drug manufacturing or distribution;

(10) [~~(9)~~] has failed to pay a license fee or a renewal fee for a license; or

(11) [~~(10)~~] has obtained or attempted to obtain a license by fraud or deception.

(b) - (f) (No change.)

(g) The commissioner may suspend or revoke a license if the license holder no longer meets the qualification for obtaining a license under Health and Safety Code, §431.405.

§229.429. Minimum Standards for Licensure.

(a) - (e) (No change.)

(f) Minimum restrictions on transactions.

(1) Returns.

(A) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or [~~chain~~] pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or [~~chain~~] pharmacy warehouse. An expired, damaged, recalled, or otherwise nonsalable prescription drug that is returned to the wholesale distributor may be distributed by the wholesale distributor only to either the original manufacturer or a third party returns processor. The returns or exchanges, salable or otherwise, received by the wholesale distributor as provided by this subsection, including any redistribution of returns or exchanges by the wholesale distributor, are not subject to the pedigree requirement under §431.412 of the Act if the returns or exchanges are exempt from pedigree under: [~~of the Act. In connection with the returned goods process, a wholesale distributor shall establish appropriate business practices and exercise due diligence designed to prevent the entry of adulterated or counterfeit drugs into the distribution channel.~~]

(i) Section 503, Prescription Drug Marketing Act of 1987 (21 U.S.C. §353(c)(3)(B));

(ii) the regulations adopted by the secretary to administer and enforce that Act; or

(iii) the interpretations of that Act set out in the compliance policy guide of the United States Food and Drug Administration.

(B) Each wholesale distributor and pharmacy shall administer the process of drug returns and exchanges to ensure that the process is secure and does not permit the entry of adulterated or counterfeit drugs into the distribution channel.

(C) Notwithstanding any provision of state or federal law to the contrary, a person that has not otherwise been required to obtain a wholesale license under this subchapter and that is a pharmacy engaging in the sale or transfer of expired, damaged, returned, or recalled prescription drugs to the originating wholesale distributor or manufacturer, and pursuant to federal statute, rules, and regulations, including the United States Food and Drug Administration's applicable guidances implementing the Prescription Drug Marketing Act of 1987 (Pub.L. No. 100 - 293), is exempt from wholesale licensure requirements under this subchapter.

(D) All other returns shall comply with the requirements of Title 21, Code of Federal Regulations, §201.23(a)(1 - 5).

(2) Distributions. A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed under this subchapter, or the appropriate state licensing authorities, if an out-of-state wholesaler or retailer, or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must verify that the person is legally authorized by the department or the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs.

(3) Pedigree.

(A) A person, who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer, shall provide a pedigree for each prescription drug for human consumption that leaves or at any time has left the normal distribution channel and is sold, traded, or transferred to any other person.

(B) A pharmacy that sells a drug to a person other than the final consumer shall provide a pedigree to the person acquiring the prescription drug. The sale of a reasonable quantity of a drug to a practitioner for office use is not subject to this subsection.

(C) A retail pharmacy or pharmacy warehouse is required to comply with this section only if the pharmacy or warehouse engages in the wholesale distribution of a prescription drug.

(D) The sale, trade, or transfer of a prescription drug between license holders with common ownership or for an emergency is not subject to this section.

(E) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, but excluding the original manufacturer of the finished form of a prescription drug, and who is in possession of a pedigree for a prescription drug must verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

(F) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At a minimum, the chain of distribution information must include:

(i) the name, address, telephone number, and, if available, the email address of each person who owns or possesses the prescription drug and each wholesale distributor of the prescription drug;

(ii) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(iii) the transaction dates; and

(iv) certification that each recipient has authenticated the pedigree.

(G) The pedigree must include, at a minimum, the:

(i) name of the prescription drug;

(ii) dosage form and strength of the prescription drug;

(iii) size of the container;

(iv) number of containers;

(v) lot number of the prescription drug; and

(vi) name of the manufacturer of the finished dosage form.

(H) Each pedigree statement must be:

(i) maintained by the purchaser and the wholesale distributor for at least three years; and

(ii) available for inspection and photocopying not later than the second business day after the date a request is submitted by the department or a peace officer in this state.

(I) Verification procedures.

(i) Each transaction listed on the pedigree must be affirmatively authenticated prior to any wholesale distribution of a prescription drug.

(ii) A person in possession of a pedigree for a prescription drug must certify, using the following methods, that each transaction listed on the pedigree has occurred.

(I) Invoice confirmation. Receipt of an invoice (or shipping document) from the seller to the purchaser, which may have the prices redacted. Documentation requirements include at a minimum a copy of the invoice or shipping document. If this method is used to authenticate a pedigree, the wholesaler must review the document received for signs of tampering, incompleteness, or inconsistency with other invoices or shipping documents from that manufacturer or wholesaler, and must randomly verify the authenticity of the invoice or shipping document with the seller or shipping point reflected on that document using one of the methods in the subsections below. Each wholesaler shall establish policies and procedures for the random verification of the authenticity of the invoices or shipping documents according to statistically sound standards. Each wholesaler shall establish policies and procedures for verification with those wholesalers in the distribution chain with which the wholesaler performing the authentication does not have an established prescription drug vendor relationship.

(II) Telephonic confirmation. Documentation requirements include a signed statement by the person placing the telephone call identifying the person's name and position title representing the seller who provides the information, the date the information was provided, and verification of the sales transaction between the parties, including verification of the date of the transaction and the quantity of prescription drugs involved in the transaction.

(III) Electronic mail confirmation. Documentation requirements include a copy of the email that identifies the person's name and position title representing the seller who provides the information, the date the information was provided, and verification of the sales transaction between the parties, including verification of the date of the transaction and quantity of prescription drugs involved in the transaction.

(IV) Electronic web-based confirmation. Verification of the transaction per a web-based system established by the seller or an independent person that is secure from intentional or unintentional tampering or manipulation to conceal an accurate and complete history of the prescription drug transaction(s). Documentation requirements include a written representation from the seller or independent person that the seller or independent person, as applicable, is responsible for the information included on the website and has adequate security on the information posted to prevent unauthorized tampering, manipulation, or modification of the information and a copy of the dated website page that confirms the sales transaction between the parties, including the date of the transaction and quantity of prescription drugs involved in the transaction.

(V) Notarized copy confirmation. Receipt of a legible and unaltered copy of a previous transaction's pedigree paper that had been signed under oath at the time of the previous transaction to support the transaction to which the pedigree paper relates. If this method is used to authenticate a pedigree, the wholesaler must review the document received for signs of tampering, incompleteness, or inconsistency, and must randomly verify the authenticity of pedigrees using one of the methods in the subsections above. Each wholesaler shall establish policies and procedures for the random verification of the authenticity of these copies of pedigree according to statistically sound standards.

(VI) Exclusive purchasing. A wholesale distributor may use a written agreement between the wholesale distributor and an authorized distributor of record that requires that all prescription drugs distributed to the wholesale distributor by the authorized distributor of record must be purchased by the authorized distributor of record from the manufacturer. If this method is used to authenticate a pedigree, the wholesale distributor must establish policies and procedures for the random verification of the authenticity of the pedigrees that disclose the authorized distributor of record purchased the prescription drug from the manufacturer according to statistically sound standards.

(VII) Any other method approved by the department.

(4) [~~(3)~~] Premises. Prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license, except as listed in paragraph (5) [~~(4)~~] of this subsection. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(A) the identity and authorization of the recipient is properly established; and

(B) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(5) [~~(4)~~] Delivery to hospital pharmacies. Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the date of delivery to the pharmacy receiving area.

(g) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 11. CONTRACTS

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §11.1 and §11.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 3560, 80th Legislature, 2007, relates to the transfer of the powers and duties of the Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. This proposed rulemaking is necessary to update the Texas Commission on Environmental Quality (TCEQ) rules to reflect this transfer of responsibilities.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the rules to be consistent with Texas Register requirements and agency guidelines.

The proposed amendments to §11.1, Historically Underutilized Business Program and §11.3, Bid Opening and Tabulation, would change the name of the referenced agency from the Texas Building and Procurement Commission to Texas Comptroller of Public Accounts, Texas Procurement and Support Services.

In proposed §11.1, the opening paragraph relating to the commission adopting by reference the rules of the Texas Comptroller of Public Accounts is now designated as subsection (a) and an old *Texas Register* reference was removed. Added is proposed subsection (b) that references Texas Government Code, §2161.003.

In proposed §11.3(a) references to 1 TAC §113.5(b) and an old *Texas Register* citation are proposed to be deleted. In proposed subsection (c), relating to the location of copies of the rule, is removed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules are administrative in nature and update agency rules concerning Historically Underutilized Businesses (HUBs) for administrative changes made by HB 3560, 80th Legislature, Regular Session. The legislation transferred certain procurement provisions from the Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. The proposed rules update the agency's procurement provisions to reflect the change of the state oversight agency to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services and refer to the appropriate legal citations. There will be no changes in the manner in which the agency conducts procurement operations, and no fiscal implications are anticipated for the agency or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistent with state law.

The proposed rules are administrative in nature and will not affect the manner in which the agency conducts procurement operations. Individuals and businesses will not be affected by the update in agency rules since any changes reflect the correct state oversight agency and legal citations. Entities that sell to the state must comply with state procurement laws to be an eligible vendor.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules, which are administrative in nature and reflect current legal citations that now govern state procurement actions.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules implement state law and, because of their administrative nature, do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the proposed rulemaking is to implement HB 3560 and to update agency names and references to the rules. The changes are not expressly to protect the environment and reduce risks to human health and the environment. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a tak-

ing under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement legislation and to update agency names and correct references to rules. The proposed rules will substantially advance this stated purpose. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on June 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-009-011-AS. The comment period closes June 22, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Wendy Cox or Joe McGill, Administrative Support Services Division, (512) 239-1006.

SUBCHAPTER A. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

30 TAC §11.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The proposed amendment implements House Bill 3560, 80th Legislature, 2007.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services [~~Texas Building and Procurement Commission~~] in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 [~~1 TAC §§111.11 - 111.22 and §§111.26 - 111.28~~] (relating to Historically Underutilized Business Program)[~~, as amended through the November 5, 2004, issue of the *Texas Register* (29 TexReg 10249)~~].

(b) The adoption of this rule is required by Texas Government Code, §2161.003, 76th Legislature, 1999.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802433
Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 239-2548

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SUBCHAPTER C. BID OPENING AND TABULATION

30 TAC §11.3

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The proposed amendment implements House Bill 3560, 80th Legislature, 2007.

§11.3. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services [~~Texas Building and Procurement Commission~~] in 34 TAC §20.35(b) [~~1 TAC §113.5(b)~~] (relating to Bid Submission, Bid Opening, and Tabulation)[~~, as amended through the September 8, 2000, issue of the *Texas Register* (25 TexReg 8848)~~].

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d), 75th Legislature, 1997.

[~~(c) Copies of the rule are filed in the Texas Commission on Environmental Quality's (TCEQ) Library, located at 12100 Park 35 Circle, Building A, Austin, and at all TCEQ regional offices.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802434
Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 239-2548

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM
SUBCHAPTER E. APPLICATION, ENROLLMENT, PAYMENT, AND FEES

34 TAC §7.42

The Comptroller of Public Accounts proposes an amendment to §7.42, concerning enrollment period. House Bill 2173, 80th Legislature, 2007, effective June 15, 2007, requires the board to establish by rule criteria and procedures to guide the board in determining when and under what conditions to reopen new enrollment in the program and requires the board to develop procedures for annually assessing whether administration changes could be made that would enable the board to reopen enrollment. Subsection (a) amended to remove obsolete language. Subsection (b) is amended to account for temporary suspensions of enrollment. New subsection (d) is added to require the board, in each year that new enrollment in the program remains closed, to determine if new enrollment may be reopened. The amendments set forth the procedures and the criteria on which the board bases this determination and permits the board to reopen new enrollment in the program in certain circumstances. The amendments also require the board to consider annually the structure of the program and whether statutory or administrative changes could be made that would lead to reopening new enrollment in the program.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by setting forth the procedures and criteria on which the Board could reopen enrollment in the program. The proposed amendment would have no significant fiscal impart on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Linda Fernandez, Manager, Texas Tomorrow Funds, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

The amendment is proposed under Education Code, §54.619(k), which requires the board to establish by rule procedures and criteria used by the board to make an annual determination whether new enrollment in the program may be reopened.

The amendment implements Education Code, §54.619(k).

§7.42. Enrollment Period.

(a) Except as provided in subsection (c) of this section, each enrollment period shall begin and end on dates set annually by the board and published in the *Texas Register* [~~with the initial enrollment period beginning January 2, 1996, and ending March 31, 1996~~]. The official postmark date affixed by the United States Postal Service or date stamp evidencing actual receipt of the application at the address specified as follows, whichever is earlier, shall be considered the date of receipt of an application for purposes of the enrollment period. Applications may be mailed to the following address: Prepaid Higher Education Tuition Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407. In the alternative applications may be delivered to the following address: 111 East 17th Street, Room 1114, Austin, Texas 78774-0001.

(b) The board reserves the right to limit or suspend enrollment if [~~as~~] necessary to ensure the actuarial soundness of the fund.

(c) An extended enrollment period for beneficiaries classified as "newborns" may be established by the Board on an annual basis.

(d) In each year that new enrollment in the program is temporarily suspended under Education Code, §54.619(j), the board shall determine whether to reopen new enrollment in the program based on the following criteria: the sufficiency of available alternatives for college savings offered by the State: whether analysis of actuarial data shows that the new enrollment in the program may be reopened in an actuarially sound manner, and any other relevant criteria. The board may reopen the program to new enrollment if it determines that the alternatives for college savings offered by the state do not offer Texans sufficient help to attain a college education, and that the program could be reopened in an actuarially sound manner. In each year that new enrollment in the program remains closed, the board shall consider the current structure of the program and determine whether statutory or administrative changes are needed to enable the board to reopen the program to new enrollment in an actuarially sound manner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2008.

TRD-200802385
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §700.1340

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1340, concerning special issues, in its Child Protective Services chapter. The purpose of the amendment is to change the process for obtaining court approval for travel outside the United States, as required by the enactment of Texas Family Code §264.122, Court Approval Required for Travel Outside the United States by Child in Foster Care. The amendment also simplifies the language regarding a child's travel out of state and requires DFPS to notify the court and to follow any local rules of administration before permitting the child to travel out of state. The agency's name is also updated.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the judicial systems resources will be used more efficiently while assuring the safety of children traveling who are in DFPS conservatorship. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Carrie Lopez at (512) 438-3589 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-378, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code, §264.122.

§700.1340. Special Issues.

(a) Contact between the parents and the child. When a child in the [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services' (DFPS's) [~~(TDPRS's)~~] managing conservatorship is in substitute care, the child's parents and the child have a right to maintain regular contact with each other unless:

(1) - (2) (No change.)

(b) Travel by a child in DFPS's managing conservatorship.

(1) If a child travels outside Texas, DFPS must give notice to the court and comply with any local court rules of administration before permitting the child to travel;

(2) If a child travels outside the United States, DFPS must:

(A) submit to the court a motion with the caregiver's statement regarding travel plans and DFPS's recommendation regarding the proposed travel; and

(B) obtain a court order approving the travel in advance.

[~~(b) When a child travels.~~]

[~~(1) Whenever a child in TDPRS's managing conservatorship travels outside the state or the country, the court must approve the plan for the child's travel. To secure the court's approval, the worker:~~]

[~~(A) notifies the court of the pending trip in writing; and~~]

[~~(B) advises the court that the Office of Protective Services for Families and Children (PSFC) will consider the plan for the child's travel approved if the court does not specifically object to it.~~]

[~~(2) If the court responds, the worker places a copy of the court's response in the child's record. If the court does not respond, the worker places a copy of the written notification to the court in the case record.~~]

(c) (No change.)

(d) Disaster plans.

(1) Every CPS [~~PSFC~~] region must prepare a regional disaster plan and give a copy of it to:

(A) CPS's [~~PSFC's~~] field operations manager; and

(B) every DFPS-paid [~~TDPRS-paid~~] foster caregiver in the region.

(2) The plan must:

(A) document the region's plans for evacuating children in DFPS-paid [~~TDPRS-paid~~] foster care if a disaster occurs that requires evacuation; and

(B) (No change.)

(3) If a foster caregiver evacuates children in DFPS's [~~TDPRS's~~] managing conservatorship during a disaster, the caregiver must notify CPS [~~PSFC~~] of each child's whereabouts and condition as soon as possible after the evacuation. Every region must advise its caregivers in writing that the caregivers can call the child abuse hotline (1-800-252-5400) to complete such notifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2008.

TRD-200802375

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS AND RESIDENTIAL TREATMENT CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §748.131, concerning what are the specific responsibilities of the governing body, and §748.1705, concerning what are the nutrition requirements for a child with primary medical needs, in its General Residential Operations and Residential Treatment Centers chapter. The purpose of the amendments is to clarify language.

The amendment to §748.131 clarifies language regarding the make-up of the governing body and more clearly addresses the persons that have a conflict of interest.

The amendment to §748.1705 allows physicians to plan a child's tube feeding diet. The rule currently only allows dietitians to plan these diets. This proposed revision is consistent with the corresponding rule in §749.3073 of this title (relating to What are the nutrition requirements for a child with primary medical needs?), which already allows physicians to plan a tube feeding diet.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that residential child-care operations will have a clearer understanding of what is required in minimum standard rules, and children placed in residential care will benefit as a result of this increased clarity. There will be no adverse impact on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required by Chapter 2006, Government Code. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-377, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 2. GOVERNING BODY

40 TAC §748.131

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.131. What are the specific responsibilities of the governing body?

(a) The governing body is responsible for:

(1) Ensuring the operation remains fiscally sound;

(2) Overseeing and ensuring the management of the operation's services and programs in compliance with your policies;

(3) Approving and having authority over the operational policies and activities which must comply with rules of this chapter;

(4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;

(5) Ensuring that the majority of the voting members of the governing body consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following: [~~persons employed by or working at the operation, any family members of the owner or governing body members, paid consultants, or others who benefit financially from the operation, such as subcontractors or vendors, do not comprise a majority of the voting members of the governing body:~~]

(A) Family members of an officer, director, or a person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the operation, including but not limited to persons employed by or working at the operation, paid consultants, subcontractors, or vendors.

[~~(A) Operations that are granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and~~]

[~~(B) Operations that are granted a permit by us after January 1, 2007, have two years from the date the operation is licensed by us to comply with this paragraph; and~~]

(6) Carrying out governing body responsibilities assigned in the policies and procedures.

(b) Regarding subsection (a)(5) of this section:

(1) Operations granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and

(2) Operations granted a permit by us after January 1, 2007, have two years from the date the operation is licensed by us to comply with this paragraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802453
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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SUBCHAPTER J. CHILD CARE
DIVISION 7. NUTRITION AND HYDRATION

40 TAC §748.1705

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1705. What are the nutrition requirements for a child with primary medical needs?

(a) (No change.)

(b) A licensed physician must prescribe tube feeding. A dietitian or physician must plan the diet that the physician prescribes.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802454
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.131, 749.1415, 749.3503, and 749.3633, concerning what are the specific responsibilities of the governing body, what health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease, what are the requirements for contacting birth parents that become my clients, and what must I do if I do not place a child with the adoptive applicants within six months after I complete the pre-adoptive home screening, in its Child-Placing Agencies chapter. The purpose of the amendments is to ensure consistency with legislation, clarify language, and add flexibility to rule requirements.

Section 749.131 clarifies the language regarding the make-up of the governing body and more clearly addresses the persons that have a conflict of interest.

Section 749.1415 is revised so that requirements related to diseases "that may be spread through casual contact" apply only to diseases that are "reportable to the DSHS." This proposed change recognizes that foster parents require the flexibility to be present in their own home and take part in activities at the home even when they are ill with a disease that is spread through casual contact, such as a cold or the flu. Specific precautions in this rule would apply only when the disease is reportable to DSHS, such as tuberculosis or HIV/AIDS.

Section 749.3503 is revised to comply with House Bill 3997 of the 80th Legislature. HB 3997 of the 80th Legislature states, in part, that attempting to locate an alleged father is not required under certain circumstances. This rule currently requires reasonable efforts to locate an absent father. Therefore, this rule is amended to be consistent with the new law. The proposed amendment also includes clarifying language to make the rule grammatically correct.

Section 749.3633 is revised to offer more flexibility to child-placing agencies by requiring a home study update for waiting potential adoptive parents every six months instead of within 30 days before a child is placed in the home. The clause requiring a visit to the home within 30 days before a child is placed in the home is also deleted, as quarterly home visits are already required in another rule and are sufficient for homes in which a child has not yet been placed.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that residential child-care operations will have a clearer understanding of what is required in minimum standard rules, and children placed in residential care will benefit as a result of this increased clarity. There will be no adverse impact on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required by Chapter 2006, Government Code. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the pro-

posal may be submitted to Texas Register Liaison, Legal Services-377, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 2. GOVERNING BODY

40 TAC §749.131

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.131. What are the specific responsibilities of the governing body?

(a) The governing body is responsible for:

(1) Ensuring the agency remains fiscally sound;

(2) Overseeing and ensuring the management of the agency's services and programs in compliance with your policies;

(3) Approving and having authority over the agency's operational policies and activities which must comply with rules of this chapter;

(4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;

(5) Ensuring that the majority of the voting members of the governing body consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following: [~~persons employed by or working at the agency, any family members of the owner or governing body members, paid consultants, or others who benefit financially from the agency, such as subcontractors or vendors, do not comprise a majority of the voting members of the governing body:~~]

(A) Family members of an officer, director, or a person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the operation, including but not limited to persons employed by or working at the operation, paid consultants, subcontractors, or vendors.

[~~(A) Agencies that are granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and~~]

[~~(B) Agencies that are granted a permit by us after January 1, 2007, have two years from the date the agency is licensed by us to comply with this paragraph; and~~]

(6) Carrying out governing body responsibilities assigned in the agency's policies and procedures.

(b) Regarding subsection (a)(5) of this section:

(1) Operations granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and

(2) Operations granted a permit by us after January 1, 2007, have two years from the date the operation is licensed by us to comply with this paragraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802455
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL
DIVISION 1. MEDICAL AND DENTAL CARE

40 TAC §749.1415

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1415. What health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease?

(a) - (b) (No change.)

(c) If a health-care professional diagnoses a person in care with a communicable disease that is reportable to Department of State Health Services (DSHS) [~~may be spread through casual contact~~], a health-care professional must authorize the person's participation in routine activity at the foster home. The authorization must:

(1) - (3) (No change.)

(d) If an employee, a contract service provider, a caregiver, someone else in one of your foster homes, or a volunteer has a communicable disease that is reportable to DSHS [~~may be spread through casual contact~~], you must obtain written authorization from a health-care professional for the person to be present at the agency or foster home. The written authorization must include a statement that the person will not pose a serious threat to the health of others.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802456
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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SUBCHAPTER R. ADOPTION SERVICES: BIRTH PARENTS
DIVISION 1. BIRTH PARENT PREPARATION

40 TAC §749.3503

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042. and Texas Family Code §161.002(c-1), as enacted by House Bill 3997, 80th Session.

§749.3503. What are the requirements for contacting birth parents that become my clients?

(a) (No change.)

(b) If the contacts required in subsection (a) of this section cannot be made, you must document that you have exercised reasonable efforts to locate the absent parent, and you must document why the contacts could not be made. Reasonable efforts to locate an absent parent are not required for an alleged biological father whose rights will be terminated under Texas Family Code §161.002(c-1).

(c) Contacts must assist birth parents to:

(1) - (2) (No change.)

(3) Freely make a choice regarding relinquishing the child to the agency for adoption. The birth parents must not be pressured to make a decision to place their child for adoption;

[(4) Insure that birth parents are not pressured to make a decision to place their child for adoption;]

(4) [(5)] Express [Obtain information from birth parents about] their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with adoptive family; and

(5) [(6)] Provide [Obtain] the required Health, Social, Educational, and Genetic History Report (HSEGH) information.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802457
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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SUBCHAPTER S. ADOPTION SERVICES: ADOPTIVE PARENTS
DIVISION 2. PRE-ADOPTIVE HOME SCREENING

40 TAC §749.3633

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3633. What must I do if I do not place a child with the adoptive applicants within six months after I complete the pre-adoptive home screening?

(a) You [If you do not place a child with the adoptive applicants within six months after you complete the adoptive screening, you] must update the screening before the end of the six-month period and at least every six months thereafter until [within the 30-day period before] a child is placed in the home.

(b) For adoptive homes that are not providing foster care, the written update must include a[:]

[(1) A] review and any required updating of each category of information required for an adoptive home screening.[; and]

[(2) Documentation of at least one visit to the adoptive home when all household members are present within the 30-day period before a child is placed in the home.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802458
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 22, 2008
For further information, please call: (512) 438-3437

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §226.4

The Prescribed Burning Board withdraws the proposed amendments to §226.4 which appeared in the February 1, 2008, issue of the *Texas Register* (33 TexReg 822).

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802447
Dolores Alvarado Hibbs
General Counsel
Prescribed Burning Board
Effective date: May 12, 2008
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §§22.196 - 22.202

The Texas Higher Education Coordinating Board withdraws the proposed new §§22.196 - 22.202 which appeared in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9001).

Filed with the Office of the Secretary of State on May 8, 2008.

TRD-200802411
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 8, 2008
For further information, please call: (512) 427-6114

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §55.116

The Office of the Attorney General, Child Support Division adopts an amendment to 1 TAC §55.116, regarding forms for child support enforcement. The amended section is adopted without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2881) and will not be republished.

The purpose of the amendment is to provide forms currently used by the Office of the Attorney General, Child Support Division.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Family Code §158.106, which authorizes the Office of the Attorney General to prescribe forms for the collection of child support.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2008.

TRD-200802514
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: June 3, 2008
Proposal publication date: April 11, 2008
For information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 8. PROJECT ACCESS PROGRAM RULES

10 TAC §8.1

The Texas Department of Housing and Community Affairs (the Department) adopts new §8.1 concerning Project Access Program Rules without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2631) and will not be republished. The purpose of the adopted new section is to define the eligibility criteria that apply to Project Access voucher recipients.

The new section addresses the specific eligibility criteria for program participants.

There were no public comments concerning the adoption of this new section.

BOARD RESPONSE: The Board approved the final order adopting the new section on May 8, 2008.

The new section is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306; §2306.053(b)(10) which gives the Department the authority to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program; and §2306.053(b)(13) which authorizes the Department to obtain, retain, and disseminate records and other documents in electronic form.

No other statutes, articles, or codes are affected by the proposed new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802437
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 29, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES
SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

16 TAC §27.31

The Public Utility Commission of Texas (commission) adopts an amendment to §27.31 relating to Historically Underutilized Business Program with no changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1947). The amendment to §27.31 is necessary in order to incorporate the changes enacted through House Bill 3560, 80th Legislature, 2007 (HB 3560), which renamed the Texas Building and Procurement Commission as the Texas Facilities Commission and transferred certain duties from the Texas Building and Procurement Commission to the Comptroller of Public Accounts. The name change and transfer of duties became effective September 1, 2007. Before September 1, 2007, the commission, under Texas Government Code §2161.003, was required to adopt the Historically Underutilized Business (HUB) Program rules from the Texas Building and Procurement Commission (formerly called the Texas General Services Commission). As a result, the current §27.31 states that "the commission adopts by reference the rules of the Texas General Services Commission." Because the HUB program rules, which were located under Title 1, Part 5, Chapter 111, Subchapter B, have now been transferred and reorganized under Title 34, Part 1, Chapter 20 of the Texas Administrative Code, the amendment to §27.31 is necessary to comply with Texas Government Code §2161.003. This amendment is adopted under Project Number 35351.

The commission did not receive any comments on the proposed amendment.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and Texas Government Code §2161.003, which requires the commission to adopt the Comptroller of Public Accounts rules for Historically Underutilized Businesses.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Texas Government Code §2161.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802463
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: June 1, 2008
Proposal publication date: March 7, 2008
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.24

The Texas Higher Education Coordinating Board adopts the repeal of §§7.1 - 7.24 concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas without changes to the proposed text as published in the March 21, 2008 issue of the *Texas Register* (33 TexReg 2431) and will not be republished. Specifically, this repeal will allow Board staff to combine provisions of Chapter 7 into a new chapter that will improve the processes private postsecondary educational institutions and out-of-state public postsecondary educational Institutions follow in order to operate in Texas.

There were no comments received regarding the repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 7, 2008.

TRD-200802400
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 27, 2008
Proposal publication date: March 21, 2008
For further information, please call: (512) 427-6114

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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.16

The Texas Higher Education Coordinating Board adopts new §§7.1 - 7.16, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions, with changes to §§7.3 - 7.6 of the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2432). Sections 7.1, 7.2 and 7.7 - 7.16 are being adopted without changes and will not republished.

Specifically, these new rules provide for a streamlining of the processes institutions wishing to operate in Texas need to complete to establish operations in the state. The language in the new sections intends to improve the understanding of the rules. There is also new clarifying language in §7.6 (relating to Recog-

nition of Accrediting Agencies) on the standards for recognizing accrediting agencies. Other minor clarifying language changes are incorporated throughout the chapter.

The following comments were received regarding the new rules:

The following comments were received from Career College Association:

Comment: Recommends changes to §7.3(25) and §7.4(a)(3) regarding use of the words "home campus".

Response: Staff partially agreed, and made changes to §7.4(a)(3).

Comment: Recommends changes to §7.4(a) regarding the words "new institution".

Response: Staff agrees. Deleted "new".

Comment: Recommends removing the words "fully accredited" from §7.4(a)(3).

Response: Staff disagrees. Texas Education Code §61.303 states: "The provisions of this subchapter do not in any way apply to an institution which is fully accredited by a recognized accrediting agency. . . ." "Fully accredited" will stay in the rules.

Comment: Recommends changes to §7.5(3) and (4) regarding policy making and distinction of roles.

Response: Staff believes any changes made to these sections would be substantive changes. Staff will work with the various constituents to reword for July.

The following comments were received from ITT Educational Services:

Comment: Recommends definition for technical associate degree.

Response: Staff changed all references to "technical associate degree" to "applied associate degree".

Comment: Recommends adding "or §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas)".

Response: Staff agrees.

Comment: Recommends clarifying §7.3(19) Concurrent Instruction by striking the word "classes" from the definition.

Response: Staff agrees. "Classes" has been stricken.

Comment: Recommends changing §7.3(22) definition of "exempt institution".

Response: That change has been made.

Comment: Recommends changing the wording in §7.3(25) definition of Home Campus.

Response: Partial changes were made.

Comment: Recommends changes to §7.4(a) regarding the words "new institution".

Response: Staff agrees. Deleted "new".

Comment: Recommends changes to §7.5(a) regarding Standards for Operation of Institutions.

Response: Staff agrees, and changes are reflected in the supplemental documents.

Comment: Recommends changes to §7.5(3) and (4) regarding Policy Making and Distinction of Roles.

Response: Staff believes any changes made to these sections would be substantive changes. Staff will work with the various constituents to reword for July.

Comment: Recommends changes to §7.6(a) relating to Recognition of Accrediting Agencies. Asks to have this sentence revised to read, "The Texas Higher Education Coordinating Board may will recognize accrediting agencies. . . ."

Response: Staff disagrees. There is no guarantee that every agency that applies will gain recognition.

Comment: Recommends changes to §7.6(a)(1)(E)(i), (a)(2)(A)(iv) and (a)(2)(C) regarding time limits for submitting information to the THECB.

Response: Staff disagrees with extending the time limit from ten days to thirty days.

Comment: Recommends changes to §7.6(a)(1)(F), regarding site visits to institutions the agency accredits.

Response: Staff disagrees. Information about how site visits are carried out is integral to the application process.

Comment: Recommends changes to §7.6(a)(2)(A)(i) regarding publicly disclosed standards.

Response: Staff agrees, and changes are reflected in the supplemental documents.

Comment: Recommends changes to §7.7(k)(2) regarding duty to report, stating reporting requirements are "overly burdensome".

Response: Staff disagrees. Informing the Coordinating Board when major faculty changes occur is not overly burdensome.

The following comments were received from Accrediting Commission of Career Schools and Colleges of Technology:

Comment: Recommends changes to §7.5 (relating to Standards for Operations of Institutions) by deleting the words "substantially similar", and deleting references to academic and professional societies.

Response: Staff agrees, and changes are reflected in the supplemental documents.

Comment: Recommends changes to §7.5(3) and (4) regarding policy making and distinction of roles.

Response: Staff believes any changes made to these sections would be substantive changes. Staff will work with the various constituents to reword for July.

Comment: Recommends changes to §7.5(9) regarding administrative resources.

Response: Staff agrees. Changes are reflected in the supporting documents.

Comment: Recommends changes to §7.5(10)(A) regarding student admission and remediation.

Response: Staff disagrees and believes current language is appropriate.

Comment: Recommends changes to §7.6(a)(1)(A) regarding recognition of accrediting agencies and the scope of recognition from the Department of Education.

Response: Staff agrees, and changes are reflected in the supplemental documents.

Comment: Recommends changes to §7.6(a)(1)(E)(ii) regarding the requirement to report number of degrees awarded and number of students enrolled each fall.

Response: Staff will consider this change for July.

Comment: Recommends changes to §7.6(a)(2)(A)(i) regarding publicly disclosed standards.

Response: Staff agrees, and changes are reflected in the supplemental documents.

The following comments were received from Accrediting Council for Independent Colleges and Schools:

Comment: Recommends changes to §7.6(a)(2)(A)(i) regarding publicly disclosed standards.

Response: Staff agrees, and changes are reflected in the supplemental documents.

The following comments were received from Career Colleges and Schools of Texas:

Comment: Recommends changes to §7.4(b) regarding Obtaining a Certificate of Authorization or a Certificate of Authority to operate in Texas.

Response: Staff agrees. The suggested language clarifies §7.4(b). Changes are reflected in the supplemental documents.

Comment: Recommends changes to §7.5(2)(B) regarding Qualifications of Institutional Officers, saying the statement "preferably an earned doctorate" should be replaced in order to better match the standards of all accreditors.

Response: Staff disagrees. By saying "preferably", the institutions are given leeway.

Comment: Recommends changes to §7.5(3) and (4) regarding policy making and distinction of roles.

Response: Staff believes any changes made to these sections would be substantive changes. Staff will work with the various constituents to reword for July.

Comment: Recommends changes to §7.5(9) regarding administrative resources.

Response: Staff agrees. Changes are reflected in the supporting documents.

Comment: Recommends changes to §7.5(10)(A) and (B) regarding Student Admission and Remediation, saying the requirements are "too specific to Texas".

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends rewriting §7.5(11) regarding Faculty Qualifications, saying the section is "too prescriptive".

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends striking §7.5(13), relating to Academic Freedom and Faculty Security.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changes to §7.5(14)(A), regarding the offering of for-credit coursework that does not directly relate to degrees, saying the 25% limit in Board rule is "too prescriptive".

Response: Staff disagrees. The 25% limit is generous.

Comment: Recommends changing §7.5(14)(B) regarding hour limits on programs.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends striking §7.5(15)(C)(ii), saying there is no need for a written agreement if another institution provides general education.

Response: Staff disagrees. A written agreement protects the student and the institution(s).

Comment: States that §7.5(16)(A) regarding Credit for Work Completed Outside a Collegiate Setting doesn't apply to all schools.

Response: Staff agrees, but it will apply to some.

Comment: Recommends changes to §7.5(19)(A) and (B) regarding Academic Records, stating that ". . . records. . . shall be securely and permanently maintained" is too prescriptive.

Response: Staff disagrees. Electronic recordkeeping eases the recordkeeping burden.

Comment: Recommends a change to §7.5(20)(B) and (20)(B)(xvi) regarding electronic catalogs.

Response: Staff agrees. Changes are reflected in the supporting documents.

Comment: Section 7.5(22), relating to Student Rights and Responsibilities, states students "may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted". The commenter further stated that "there should not be a requirement to include the Attorney General as a place to file a complaint".

Response: Staff disagrees. There may be instances when the Coordinating Board cannot remedy the situation and the Attorney General's office would be the next step.

Comment: Recommends replacing the language in §7.5(23) relating to Health and Safety.

Response: Staff disagrees and believes that the current language is clear.

Comment: Recommends moving §7.5(24) relating to reporting.

Response: Staff agrees. The change is reflected in the supporting documents.

Comment: Recommends changes to §7.6(a)(1)(E)(ii) regarding the requirement to report number of degrees awarded and number of students enrolled each fall.

Response: Staff will consider this change for July.

Comment: Suggests that §7.7, relating to Certificate of Authority and §7.8, relating to Alternative Certificates of Authority "should both apply to the pursuit of only academic associate's degrees, bachelor's degrees or above and not Applied Associate degrees, given that §7.9 provides for the offering of AAS degrees by a non-exempt institution".

Response: That was the intention. If clarification is necessary it will be brought forward in July.

Comment: Suggests striking "assembled a governing board" from §7.7(f)(2) relating to Eligibility to Apply.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Suggests changing §7.8(1)(D) relating to Alternative Certificate of Authority, raising the amount of the minimum surety bond from $5,000 to $25,000.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends adding language about Associate of Occupational Science degrees.

Response: Staff considers this to be a substantive change, and will consider for July.

The following comments were received from Virginia College at Austin:

Comment: Recommends changes to §7.3(10) and (25) regarding the definition of "home campus" and "branch campus".

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changes to §7.3(11) regarding the definition of "Career school or college".

Response: One clarifying change was made, but staff believes the definition should stand.

Comment: Recommends changes to §7.3(22) regarding the definition of "Exempt institution".

Response: Staff believes definition is clear.

Comment: Recommends changes to §7.4(a) regarding the words "new institution".

Response: Staff agrees and deleted the word "new".

Comment: Recommends changes to §7.5 relating to Standards for Operation of Institutions.

Response: Staff agrees. The change is reflected in the supporting documents.

Comment: Recommends changes to §7.5(2)(B) regarding Qualifications of Institutional Officers, saying the statement "preferably an earned doctorate" should be replaced in order to better match the standards of all accreditors.

Response: Staff disagrees. By saying "preferably", the institutions are given leeway.

Comment: Recommends changes to §7.5(3) regarding policy making.

Response: Staff believes any changes made would be substantive changes. Staff will work with the various constituents to reword for July.

Comment: Recommends rewriting §7.5(11) regarding Faculty Qualifications, saying the section is "too prescriptive".

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changes to §7.5(11) relating to Faculty Size, saying the requirements are "too prescriptive".

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changing §7.5(14)(B) regarding hour limits on programs.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changes to §7.5(22), relating to Student Rights and Responsibilities, which states students "may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted". The commenter further stated that "there should not be a requirement to include the Attorney General as a place to file a complaint".

Response: Staff disagrees. There may be instances when the Coordinating Board cannot remedy the situation and the Attorney General's office would be the next step.

Comment: Recommends changes to §7.6(a)(1)(E)(ii) regarding the requirement to report number of degrees awarded and number of students enrolled each fall.

Response: Staff will consider this change for July.

Comment: Recommends changes to §7.6(a)(1)(D)(i) relating to site visits.

Response: Staff agrees. The change is reflected in the supporting documents.

Comment: Recommends changes to §7.6(a)(1)(F) relating to resources.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changes to §7.6(a)(2)(A)(i) regarding publicly disclosed standards.

Response: Staff agrees, and changes are reflected in the supplemental documents.

The following comments were received from Accrediting Bureau of Health Education Schools:

Comment: Recommends changes to §7.6 relating to Recognition of Accrediting Agencies and suggests that the criteria listed in that section be more in line with Department of Education standards.

Response: Staff agrees. While these changes aren't yet reflected in the rules, the Department of Education standards have been incorporated into the information sent with the application for recognition of accrediting agencies.

The following comments were received from Texas Nurses Association:

Comment: Recommends changes to §7.5 relating to Standards for Operation of Institutions. The TNA requests that "applied associate degree programs leading to required state or national licensure meet the same qualifications as required for academic associate degree programs". Specifically, under §7.5(15)(A) (relating to general education hours) that applied associate degree programs leading to required state or national licensure contain 20 semester credit hours of general education courses. Also, under §7.5(20)(D) (relating to accurate and fair representation), that institutions provide information on graduation and pass rates and transferability of credit for applied associate degree programs leading to required state or national licensure.

Response: Staff considers this to be a substantive change, and will consider for July.

Comment: Recommends changes to §7.9(r)(2)(A) regarding institutional effectiveness, requiring career schools and colleges to demonstrate that "for those occupations where state or national licensure, certification, or other credentialing examinations exist, at least ninety (90) percent of program graduates pass the credentialing examination". TNA suggests this be applied to all associate degree programs leading to state or national licensure.

Response: Staff considers this to be a substantive change, and will consider for July.

The new sections are adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

§7.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic associate degree program--A grouping of courses designed to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts and the associate of science degrees.

(2) Accreditation--The status of public recognition that a recognized an accrediting agency grants to an educational institution.

(3) Accrediting agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(4) Agent--A person employed by or representing a postsecondary educational institution in an official capacity within or without Texas who:

(A) solicits any Texas student for enrollment in the institution;

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Alternative Certificate of Authority--A type of certificate of authority for approval of postsecondary institutions, with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(6) Applied associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts and the associate of applied science degrees.

(7) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, the associate of science, the associate of applied arts and the associate of applied science.

(8) Board--The Texas Higher Education Coordinating Board.

(9) Board staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(10) Branch campus, extension center, or other off-campus unit--Any institution or part of an institution offering or proposing to offer away from the home campus more than occasional courses or courses leading to the granting of a degree without the necessity for courses to be taken at the main campus.

(11) Career school or college--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by Texas Education Code §132.002 or §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas), and:

(A) That offers or maintains a course or courses of instruction or study; or

(B) At which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(12) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(13) Certificate of authority--The Board's approval of postsecondary institutions, (other than exempt institutions) with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(14) Certificate of authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations herein.

(15) Change of ownership or control--Any change in ownership or control of a career school or college or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college is considered to have changed:

(i) In the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) In the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(16) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(17) Classification of Instructional Programs (CIP) Code--The four (4)- or six (6)-digit code assigned to an approved associate degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(18) Commissioner--The Commissioner of Higher Education.

(19) Concurrent Instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(20) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(21) Educational or training establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(22) Exempt institution--An institution that is accredited by an agency recognized by the Board under §7.2 of this chapter (relating to Authority) or a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.003(8), or Texas Education Code Chapter 132, respectively. Exempt institutions may still have to comply with certain Board rules.

(23) Fictitious degree--A counterfeit or forged degree or a degree that has been revoked.

(24) Fraudulent or substandard degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a certificate of authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.14 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a certificate of authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.14 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(25) Home campus--The headquarters of an institution, such location to be determined as a matter of fact by the Commissioner based upon consideration of information such as, but not limited to the following:

(A) where the institution is chartered;

(B) the site, campus or city where the principal or chief executive's offices are located;

(C) the site, campus or city where the institution conducts the preponderance of its instructional activities; and

(D) any other pertinent and material facts.

(26) Occasional courses--Courses offered not more than twice at any given location in the state.

(27) Out-of-state public postsecondary institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(28) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(29) Postsecondary educational institution--An educational institution which:

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(30) Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(31) Program or Program of study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(32) Protected term--The term "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(33) Recognized accrediting agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(34) Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(35) Required state or national licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

§7.4. Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas.

(a) A institution must request and be granted a certificate of authority, an alternative certificate of authority, or a certificate of authorization by the Commissioner before it can offer to award degrees or courses leading to degrees. The Commissioner may issue a certificate of authorization to grant degrees to an institution, upon the institution's request and demonstration that it qualifies for an exemption under this subsection. The exemptions provided by this subsection apply only to the degree level for which the programs or the institution is accredited or approved, as applicable, and if an institution offers to award a degree at a level for which it is not accredited or approved by the appropriate agency of the State of Texas, the exemption does not apply. Upon issuance of a certificate of authorization as an exempt institution, the provisions of this chapter, with the exception of §§7.15 - 7.17 of this chapter do not apply to following types of postsecondary institutions:

(1) Schools or colleges that do not award degrees or offer courses leading to degrees. However, such institutions are subject to the rules of the Texas Workforce Commission Pursuant to Chapter 132 of the Texas Education Code concerning career schools and colleges.

(2) A branch campus, extension center, or other off-campus unit operated by a private or independent Texas postsecondary institution as defined by Texas Education Code, §61.003.

(3) The home campus, headquarters, or Texas location(s) of an institution which have been fully accredited by a Board-recognized accrediting agency.

(4) An institution or degree program that has received approval by an agency of the State of Texas authorizing the graduates of the institution to take a state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

(b) Institutions holding a Certificate of Approval from the Texas Workforce Commission to operate as a Career School or College and are not exempt under this chapter may be able to obtain a Certificate of Authority to award associate degrees under §7.9 of this chapter (relating to Certificate of Authority for Career Schools and Colleges). All other non-exempt institutions must use either §7.7 or §7.8 of this chapter.

(c) The home campus of an institution that is not exempt under the provisions of subsection (a) of this section may obtain a certificate of authority under either §7.7 of this chapter (relating to Certificate of Authority) or an alternative certificate of authority under §7.8 (relating to Alternative Certificates of Authority).

(d) Branch campuses of out-of-state public institutions must obtain a certificate of authority as outlined in §7.10 of this chapter (relating to Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions).

(e) Agents of an institution that is not exempt under the provisions of subsection (a) of this section, or operating with an alternative certificate of authority as provided by §7.8 of this chapter, must register with the Board as provided by §7.11 of this chapter (relating to Registration of Agents).

(f) A substantive change in the conditions under which an institution was granted a certificate of authority, an alternative certificate of authority or an exemption (certificate of authorization) must be reported in accordance with §7.12 of this chapter (relating to Occasional Courses, Changes of Level of Instruction, Changes of Ownership, and Other Substantive Changes). An accredited institution that is exempt under subsection (a)(3) of this section continues in that status so long as it maintains accreditation by a recognized accrediting agency.

(g) An institution offering only religious degrees may request a certificate of authorization affirming exempt status.

(h) Revocation of an exemption.

(1) If the Commissioner receives credible evidence that an institution is no longer qualified for an exemption, the institution shall be notified that its exempt status is revoked, and that the institution is subject to the requirements of Texas Education Code, Chapter 61 or Chapter 132 as appropriate, and this chapter.

(2) Upon receipt of the notice of revocation, the institution must cease granting or awarding degrees in Texas until it has either been granted a certificate of authority to grant degrees, or has received a determination that it did not lose its qualification for an exemption.

(3) Within ten (10) days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption.

(4) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(5) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.5. Standards for Operation of Institutions.

All institutions that operate within the State of Texas are expected to meet the following standards. Standard (2) relating to Qualifications of Institutional Officers and Standard (3) relating to Policy Making do not apply to branch campuses operating under §7.10 of this chapter (relating to Operation of Branch Campuses, Extension Centers or Other Off-Campus Units, Occasional Courses and Changes in Level). These standards will be enforced through the certificate of authority process or the alternative certificate of authority process. Standards addressing the same principles will be enforced by recognized accrediting agencies. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations which have established standards for their members' programs.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. Career Schools and Colleges also shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board administrators, supervisors, counselors, agents, and other institutional officers shall reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned advanced degree appropriate for the mission of the institution, preferably, an earned doctorate awarded by an institution accredited by a recognized accrediting agency, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Policy Making. Governing Board. The institution shall have a governing body consisting of at least three (3) people. The institution's governing board shall be an active policy-making body, focused on promoting the mission of the institution, and shall exercise its authority to ensure that the mission of the institution is carried out. Members of the policy-making body shall represent the interests of all of the institution's constituencies of the institution who are essential to carrying out the mission including the faculty, students, and staff.

(4) Distinction of Roles. There shall be sufficient distinction among the roles and personnel of the policy-making body of the institution, the administration, and faculty to ensure their appropriate separation and independence.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Institutional Evaluation.

(A) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(B) For applied associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(9) Administrative Resources. The institution has the administrative capacity to meet the daily needs of the administration, faculty and students, including facilities, laboratories, equipment, technology and learning resources that support the institution's mission and programs.

(10) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The academic skills of each entering student may be assessed with an instrument of the institution's choice. The institution may provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching in an academic associate, applied associate leading to required state or national licensure, or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member except, as provided by subparagraph (E) of this paragraph, teaching career and technical courses in an applied associate degree program, or career and technical courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency and or at least three (3) years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in an applied associate degree program shall have at least a baccalaureate degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Except as provided by subparagraph (E) of this paragraph, graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work ex-

perience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. Such appointments shall be limited and the justification for each such appointment shall be fully documented. The Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(12) Faculty Size. There shall be a sufficient number of faculty holding full-time teaching appointments that are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one (1) full-time faculty member in each program. At the graduate level, there shall be at least two (2) full-time faculty members in each program.

(13) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(14) Curriculum

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed twenty-five (25) percent of all courses.

(B) Academic associate degrees and applied associate degrees must consist of at least sixty (60) semester credit hours or ninety (90) quarter credit hours and not more than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours and not more than one hundred thirty-nine (139) semester credit hours or two hundred eight (208) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours or forty-five (45) quarter credit hours and not more than thirty-six (36) semester credit hours or fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(15) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least twenty (20) semester credit hours or thirty (30) quarter credit hours. Each applied associate degree program shall contain a general education component of at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least twenty-five (25) percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a recognized accrediting agency or hold a certificate of authority.

(16) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the Advanced Placement program (AP) or the College Level Examination Program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(17) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection of books, educational material and publications, on-line materials and other resources and with staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a con-

tinuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Applied associate degree programs shall provide adequate and appropriate resources for completion of course work.

(18) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(19) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state and federally guaranteed student loans.

(20) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students. The catalog must contain, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvi) any disclosures specified by the Board or defined in Board rules. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students.

(C) The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs.

(E) Any special requirements or limitations of program offerings for the students at the Texas branch must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to enforce with the rules and regulations governing state, and federally guaranteed student loans by temporarily withholding such credentials.

(21) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

(24) Reporting. The institutions shall provide to the Board annually, in a form established by the Board, student records of the type specified in Standard (19) relating to Academic Records.

(25) Learning Outcomes. An institution may deviate from Standard 11 relating to Faculty Qualifications, Standard 12 relating to Faculty Size, Standard 16 relating to Credit for Work Completed Outside a Collegiate Setting, and Standard 17 relating to Learning Resources, if there is an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

§7.6. Recognition of Accrediting Agencies.

(a) The Texas Higher Education Coordinating Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an accrediting agency authorized to accredit educational institutions that offer the associate degree or higher. Demonstration of authorization shall include clear description of the scope of recognized accreditation.

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education:

(i) Using the U.S. Department of Education classification of instructional programs (CIP) code at the two-digit level, the applicant shall identify all fields of study in which institutions it accredits may offer degree programs.

(ii) Accrediting agencies shall, for each field of study in which an accredited institution may offer degree programs, specify the levels of degrees that may be awarded. Levels must be differentiated at least to the following, as defined in §7.3 of this chapter (relating to Definitions): applied associate degree, academic associate degree, baccalaureate degree, master's degree, first professional degree and doctoral degree.

(iii) Only institutions that qualify as eligible for United States Department of Education Title IV programs as a result of accreditation by the applicant agency will be considered exempt under §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas).

(C) Accredits institutions that have legal authority to confer postsecondary degrees as its primary activity;

(i) Accrediting agencies must show by listing all institutions accredited by the agency that either the majority of the accredited institutions have the legal authority to award postsecondary degrees or that it accredits at least fifty (50) institutions that have the legal authority to award postsecondary degrees.

(ii) An accrediting agency that accredits programs as well as institutions shall demonstrate that either it accredits more institutions than programs or that it has policies, procedures and staff sufficient to address institutional standards of quality in addition to program standards of quality.

(iii) Accrediting agencies must have standards that require all accredited institutions to comply with all applicable laws in the state and local jurisdiction in which they operate and that require accredited institutions to clearly and accurately communicate their accreditation status to the public.

(D) Requires an on-site review by a visiting team as part of initial and continuing accreditation of educational institutions;

(i) Each accrediting agency shall demonstrate, through its documented practices and/or its official policies, that it requires no fewer than three (3) members on a team when conducting initial and continuing accreditation visits, that none have a monetary or personal interest in the findings of the on-site review, and that all have professional experience that qualifies them to review the institution's compliance with the standards of the agency.

(ii) Accrediting agencies may conduct site visits for reasons other than initial and continuing accreditation with fewer team members.

(iii) Accrediting agencies shall provide a list of the visiting team members for the five (5) most recently completed on-site reviews. The list shall show name, employer, title of positions held with that employer and the standards for which the individual was responsible in that on-site review.

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board:

(i) Each accrediting agency shall provide the Board its official policy regarding disclosure of information about institutions that are or have been candidates for accreditation and are or have been accredited. Agencies shall provide to the Board, within ten (10) working days, any new information and any requested information about a Texas institution that would be available to the public under that official policy.

(ii) Each accrediting agency shall include in its standards for accreditation of Texas institutions that the institutions disclose publicly and to the Board the number of degrees awarded at each level each year and the number of students enrolled in the fall of each year.

(F) Has sufficient resources to carry out its functions.

(i) Accrediting agencies shall identify the number of on-site reviews conducted during the most recent twelve (12) month period, the number of staff members who participated in those on-site reviews and the maximum number of on-site reviews conducted by any individual staff member. If that maximum number exceeds thirty (30), the agency shall explain how it expects to carry out its function of enforcing its standards on Texas institutions.

(ii) Each accrediting agency shall provide evidence that its ratio of current assets to current liabilities equals or exceeds 1.2.

(iii) Each accrediting agency shall demonstrate that its fees are reasonable for the accreditation services provided.

(2) Recognition. To receive and maintain recognition from the Board, the accrediting agency must, in addition to the items listed in paragraph (1) of this subsection:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews;

(i) Accrediting agencies must have publicly disclosed standards that address at a minimum the following issues: student achievement in relation to the institution's mission; curricula; faculty; facilities, equipment and supplies; fiscal and administrative capacity; student support services; recruiting and admissions practices, academic calendars, catalogs, grading, etc.; measures of program length and objectives of the degrees or credentials offered; record of student complaints received by, or available to the agency; management and financial control.

(ii) In the application process, the accrediting agency must indicate how its standards address each of the quality assessment categories outlined in clause (i) of this subparagraph which represent the underlying principles described in the institutional standards of §7.5 of this chapter (relating to Standards for Operation of Institutions). Comparison of its standards with those of previously recognized accrediting agencies and with the standards in §7.5 of this chapter is encouraged as a means of indicating how its standards meet those principals.

(iii) Each accrediting agency shall provide its policy for periodic reviews. At a minimum, the accrediting agency must conduct on-site reviews at least every ten (10) years.

(iv) At least ten (10) working days before each schedule periodic on-site review of a Texas institution, accrediting agencies shall invite the Board staff to participate in the review. Such participation shall be at no expense to the institution or the accrediting agency.

(v) Within ten (10) working days of an official change in standards, the agency shall notify the Board of those changes.

(vi) By providing a copy of its publicly disclosed policies and procedures, each accrediting agency shall demonstrate that its initial and ongoing reviews and the resultant accreditation decisions are fair and consistent with the available evidence.

(vii) Accrediting agencies that use an advisory body, similar to the Certification Advisory Council described in §7.7(b) of this chapter (relating to Certificate of Authority), shall describe the advisory body's composition and authority. Accrediting agencies that do not use such a body shall describe the process used to ensure that the evidence obtained from reviews results in appropriate accreditation decisions.

(viii) The initial and ongoing reviews shall include an institutional self-evaluation process or a documented alternative process to promote continuous quality improvement.

(ix) Each accrediting agency shall have and publicly disclose its processes for appealing accreditation decisions.

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time. Written evidence may consist of a letter from the chief executive officer of the accrediting agency. Accrediting agencies shall submit the evidence annually prior to the anniversary date of the initial Board recognition.

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any investigated complaints concerning a Texas institution where the accrediting agency took official action on issues of non-compliance and the disposition of those complaints;

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority; and

(F) Demonstrate that the ownership and control of the accrediting agency is sufficiently independent to insure that the accreditation process is conducted in the public interest.

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

(1) Once recognized, an accrediting agency retains that recognition unless and until the Board withdraws the recognition. Failure to comply with any the requirements in this chapter will be grounds for the Board to consider withdrawing recognition.

(2) The Board may use information provided by parties other than the accrediting agency to assess the accrediting agency's commitment to academic quality and student achievement. The Board will consider any such information in an open, public meeting during which the accrediting agency may challenge the information.

(3) The Board will make any decision to deny recognition of an accrediting agency or to withdraw recognition from an accrediting agency in a public meeting.

(4) An institution operating in Texas as an exempt institution pursuant to §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas) when its recognized accrediting agency loses or voluntarily relinquishes its recognition will have ninety (90) days to apply for a Certificate of Authority or to reach agreement with the Board on a schedule for ceasing its operations in Texas.

(5) An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 7, 2008.

TRD-200802399
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: March 21, 2008
For further information, please call: (512) 427-6114

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CHAPTER 12. CAREER SCHOOLS AND COLLEGES

SUBCHAPTER A. PURPOSE, AUTHORITY, AND DEFINITIONS

19 TAC §§12.1 - 12.3

The Texas Higher Education Coordinating Board adopts the repeal of §§12.1 - 12.3 concerning Career Schools and Colleges without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2451). Specifically, this repeal will allow Board staff to combine provisions of Chapter 12 into a new chapter that will improve the processes Career Schools and Colleges follow in order to operate in Texas.

There were no comments received regarding this repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§12.21 - 12.39

The Texas Higher Education Coordinating Board adopts the repeal of §§12.21 - 12.39 concerning Career Schools and Colleges without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2451). Specifically, this repeal will allow Board staff to combine provisions of Chapter 12 into a new chapter that will improve the processes Career Schools and Colleges follow in order to operate in Texas.

There were no comments received regarding this repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. ASSOCIATE DEGREE PROGRAMS

19 TAC §§12.41 - 12.46

The Texas Higher Education Coordinating Board adopts the repeal of §§12.41 - 12.46 concerning Career Schools and Colleges without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2451). Specifically, this repeal will allow Board staff to combine provisions of Chapter 12 into a new chapter that will improve the processes Career Schools and Colleges follow in order to operate in Texas.

There were no comments received regarding this repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

19 TAC §102.1073

The Texas Education Agency (TEA) adopts new §102.1073, concerning district awards for teacher excellence. The new section is adopted with changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8079). The adopted new section implements the requirements of the Texas Education Code (TEC), Chapter 21, Subchapter O, as added by House Bill 1, 79th Texas Legislature, Third Called Session, 2006, that requires the commissioner by rule to establish procedures and adopt guidelines for the administration of awards for the student achievement program.

House Bill 1, 79th Texas Legislature, Third Called Session, added the TEC, Chapter 21, Subchapter O, establishing a teacher incentive program that provides funding to districts interested in developing local incentive programs. The legislation requires that the commissioner establish the grant award program and adopt rules for developing local awards plans and the awarding of funds.

Adopted new 19 TAC §102.1073 implements the TEC, Chapter 21, Subchapter O, by establishing the District Awards for

Teacher Excellence (DATE) grant program. The new rule adopts provisions that: (1) establish the purpose of the program and requirement that interested schools districts develop local awards plans in order to be considered for funding; (2) define applicable words and terms; (3) provide details relating to district eligibility, application, and notification; (4) specify requirements for development of local awards plans; (5) set forth conditions of operation, including specifications for districts to create and submit to the TEA measurable and objective performance measures; (6) address how the amount of grant awards are determined, including the use of matching funds; and (7) stipulate the manner in which award payments are to be allocated, including required percentage distributions, to classroom teachers and other eligible campus employees. To the extent practicable, the campus should pay a classroom teacher an incentive payment in an amount of not less than $3,000 per teacher, unless otherwise determined by the local school board. Minimum awards must be no less than $1,000 per teacher.

In addition, the subchapter name is changed from "Commissioner's Rules Concerning Governor's Educator Excellence Award Programs" to "Commissioner's Rules Concerning Educator Award Programs" to accurately reflect the various types of award programs addressed in commissioner's rule.

In response to the public comments on proposed new 19 TAC §102.1073, District Awards for Teacher Excellence, and to incorporate necessary technical edits, the following changes were made:

Subsection (b), relating to definitions, was modified for clarification in paragraph (5) regarding performance award measures and in paragraph (7) regarding the use of Part II funds for teacher recruitment and retention. A technical edit to remove redundancy was made in paragraph (10) regarding designation as a targeted campus.

Subsection (e), relating to the local awards plan, was modified in paragraph (2)(A) to clarify the use of a district-level planning or decision-making committee and in paragraph (2)(B) to require evidence demonstrating teacher involvement in creating a local awards plan. Paragraph (6) was modified to establish a requirement for the selected district-level planning or decision-making committee to vote on future plan changes and submissions. Technical edits were made in subsection (e) to correct a statutory reference in paragraph (1), to clarify use of student performance measures in paragraph (2)(C), to delete paragraph (2)(G) to remove a duplicative requirement, and to re-letter subsequent subparagraphs accordingly.

Subsection (f), relating to conditions of operation, was modified to remove paragraph (1)(E), which required performance measures to be met within two years. A new paragraph (8) was added to establish a requirement for districts to maintain evidence of teacher involvement.

Subsection (g), relating to amount of grant awards, was modified in paragraph (4) to add clarifying language for the match requirements.

Subsection (h), relating to award payments, was modified in paragraph (2) to prohibit the exclusion of retired or involuntarily transferred teachers from receiving a performance award. Technical edits were made in paragraph (1) to use the percentage sign for consistency within the rule and in paragraph (3) to add clarifying language on the grant award amounts. In addition, the title of subsection (h) was modified to make clear that award payments are not solely for classroom teachers.

The adopted new rule provides guidelines and procedures for school districts and open-enrollment charter schools to follow in order to apply for the District Awards for Teacher Excellence grant funds. Grantees must agree to submit all information, application materials, and reports required by the TEA.

Local school districts are required to maintain documentation of the following: (1) approval by a majority of classroom teachers assigned to a campus selected to participate if the program is not implemented districtwide; (2) minutes of stakeholder meetings with selected campuses to share goals, purpose of award plan, and final award plan; (3) information regarding public viewing of the district award plan and the public comment period for teacher input; (4) the voting records for the district award plan by the district-level decision-making committee and the local school board of trustees or directors; and (5) records specifying distribution of final awards and stipends according to the district award plan.

In response to public comment, language was added to the rule at adoption that requires a school district to maintain campus teacher attendance records, meeting minutes, or other similar evidence of significant teacher involvement from campuses required to hold a majority vote for approval of the local awards plan.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began November 9, 2007, and ended December 9, 2007. The public comment period was extended through December 17, 2007. Following is a summary of public comments and corresponding agency responses regarding proposed new 19 TAC Chapter 102, Educational Programs, Subchapter FF, Commissioner's Rules Concerning Educator Award Programs, §102.1073, District Awards for Teacher Excellence.

Comment. Concerning §102.1073(b)(5), the Texas Classroom Teachers Association (TCTA) commented that the meaning of the language that "measures must also be generally viewed as measures of student/institutional excellence and equity" is uncommon and unclear. The TCTA asked that this language either be eliminated or changed to define exactly how a measure can be viewed as a measure of student/institutional excellence and equity.

Agency Response. The agency agrees and removed the language in subsection (b)(5) for clarity.

Comment. Concerning §102.1073(b)(5), the TCTA and the Texas State Teachers Association (TSTA) stated that limiting the definition of "meaningful, objective measures" to solely "quantifiable measures" does not comport with the statute and legislative intent and objected to the use of these measures. Additionally, the TSTA commented that §102.1073(e)(2)(C) and (D) also relate to these measures and appropriate assessments forcing districts to use Texas Assessment of Knowledge and Skills (TAKS) testing.

Agency Response. The agency disagrees and has maintained language as published as proposed. The language in subsections (b)(5) and (e)(2)(C) allows for flexibility in using measures other than TAKS or tests, such as local benchmarks, evaluation of projects, exhibits, portfolios, or other assessments that are consistent with national or state recognized professional and

technical standards. These assessments must be meaningful, objective, and quantifiable. For clarification, however, language in subsections (b)(5) and (e)(2)(C) was modified.

Comment. Concerning §102.1073(b)(7), the TCTA stated that it is unclear whether the language refers to student recruitment and retention or teacher (and other instructional personnel) recruitment and retention; consequently, the word "instructional personnel" should be added before the word "recruitment."

Agency Response. The agency agrees and included the suggested language in subsection (b)(7) for clarity.

Comment. The Texas Library Association (TLA) commented that the statutory authorization for the rule clearly allows districts to use this program to reward classroom teachers and other district personnel. The TLA stated that the definitions provided relate only to classroom teachers and not to other instructional personnel who are eligible for some component of the awards. The TLA requested that language be added to the rule to list specifically the eligibility of school librarians and media specialists in the program.

Agency Response. The agency disagrees and has maintained language as published as proposed. Section 102.1073, including the definitions in subsection (b), allows for other district personnel, such as school librarians and media specialists, to be funded with Part II funds. For clarification, however, the title of subsection (h) was modified to make clear that award payments are not solely for classroom teachers.

Comment. The director of instruction of Aransas County Independent School District commented that language in §102.1073(e)(2)(A) should reflect that districts have the option of forming a district-wide team specifically for the purpose of developing the District Awards for Teacher Excellence (DATE) award plan, rather than having to utilize the existing district planning and decision-making team.

Agency Response. The agency agrees and modified language in subsection (e)(2)(A). The TEC, §21.704(a), offers a choice to districts to use their existing district planning and decision-making committee to create the local award plan or assemble another district-level committee. The language change will reflect the option that the committee should have similar representation as the committee defined under the TEC, Chapter 11, Subchapter F.

Comment. Concerning §102.1073(e)(2)(A), the TCTA commented in support of the requirement that a local awards plan must be developed by the district-level planning and/or decision-making committee established under the TEC, Chapter 11, Subchapter F.

Agency Response. The agency disagrees; however, language was modified in subsection (e)(2)(A) removing the requirement that a local awards plan be developed by the specified district-level planning and/or decision-making committee. The TEC, §21.704(a), offers a choice to districts to use their existing district planning and decision-making committee to create the local award plan or assemble another district-level committee. The language change will reflect the option that the committee should have similar representation as the committee defined under the TEC, Chapter 11, Subchapter F.

Comment. Concerning §102.1073(e)(2)(B), the TCTA and TSTA expressed concerns regarding significant teacher involvement. The TCTA stated that the proposed rule refers to evidence of significant teacher involvement, but is incomplete in that it does not state the activities in which teachers must be involved. Noting that the relevant statute, TEC, §21.704(c), states that there must be evidence of the significant involvement of teachers in the development of the plan, the TCTA asked that the words "in the development of the plan" be added after the word "involvement." The TSTA recommended that there be a requirement in this process for more teacher participation in developing the plan.

Agency Response. The agency agrees and added language in subsection (e)(2)(B) to require teacher involvement in developing the local awards plan. The district-level planning committee responsible for designing and voting on the award plan must have significant teacher representation.

Comment. Concerning §102.1073(e)(2)(B), the TCTA expressed concern about whether examples of the required evidence of teacher involvement contained in the proposed rule, such as "an assurance from the school district superintendent" is sufficient, particularly given that the Texas Educator Excellence Grant program requirements give much more specific examples of significant teacher involvement, including teacher attendance records, meeting minutes, or other evidence.

Agency Response. The agency agrees and added language in subsection (e)(2)(B) to emphasize and identify appropriate teacher representation on the planning and decision-making committee. New subsection (f)(8) was also added to reinforce the district requirement to maintain evidence of teacher involvement.

Comment. The Texas American Federation of Teachers (Texas AFT) and the TSTA expressed concern over the level of teacher involvement in the creation of district award plans.

The Texas AFT stated that §102.073(e)(2)(E) would allow imposition of a local awards plan without the approval of a majority of classroom teachers at any campus if a district's local awards plan is drafted to cover all campuses in the district. The Texas AFT commented that only if a district's local awards plan were drafted to exclude some campuses would the statutory requirement of majority approval by teachers at participating campuses be enforced. The Texas AFT stated that this administrative narrowing of the "majority approval" requirement for campus participation in a local awards plan is not supported by the language of the TEC, §21.704, or by legislative intent. The Texas AFT commented that the TEC, §21.704, states: "A majority of classroom teachers assigned to a campus that is selected by the district- level committee to participate in the program must approve participation to be included in the local awards plan." The Texas AFT stated that in a case where the district-drawn plan provides for the participation of all campuses, those campuses have been "selected" to participate. The Texas AFT concluded that the majority of classroom teachers assigned to each of those campuses must therefore approve participation before the district's local awards plan can apply to their campus.

The TSTA commented that §102.1073(e)(2)(E) is vague with regard to the level of teacher involvement that is actually required. The TSTA recommended that the rule require that any committee formed for the purpose of developing a plan under DATE be composed of at least two-thirds classroom teachers.

Agency Response. The agency disagrees and has maintained language as published as proposed. The DATE program requires teacher input and votes at various points of the awards plan creation. The local awards plan must be developed by the district-level planning and decision-making committee, and each

district-level planning committee is required to have teacher representation. If a district selects a certain campus to participate, participation is predicated on a simple majority vote of classroom teachers assigned to the selected campus. The program also requires districts to make the awards plan available to the public for teachers and others to provide comment. Teachers are given multiple opportunities to support or oppose their district awards plan. Districts may choose campuses and select specific target teachers by grade or subject to help improve student achievement or address critical teacher shortage areas. Conducting additional and superfluous multiple campus votes, when the district-level planning-making committee has already voted on the plan will create an undue administrative burden and create an unreasonable or overly burdensome grant requirement within the request for application time constraints.

Comment. Concerning §102.1073(e)(4), the TSTA stated that this subsection restricts any appeal of a decision by the school board related to the local awards plan. The TSTA commented that the most significant consequence of this provision is if a school board approves a local awards plan that violates the teacher vote or consensus. The TSTA objected to this language stating that it restricts the process by which an employee can grieve any decision the school board makes in regard to the local awards plan in violation of an educator's due process rights. The TSTA recommended this prohibition be deleted from the rule.

Agency Response. The agency disagrees and has maintained language as published as proposed. Subsection (e)(4) precludes an appeal to the commissioner of the discretionary action of the local school board to approve a plan and submit it to the agency. The submission of a grant application is not subject to review by the commissioner through the administrative hearings process. In the event that a grant application is approved, the local plan implemented, and local administrative remedies exhausted, an individual could appeal actions taken in the development or implementation of an approved local plan if jurisdiction under the TEC, §7.057(a), exists.

Comment. Concerning §102.1073(e)(6), the TCTA and TSTA expressed concern over the ability of local school boards to vote or change a local awards plan. The TCTA stated the proposed rule allows the school district board to amend, with TEA approval, its local awards plan in accordance with subsections (g) and (h) of this section for each school year the school district receives a program grant. The TSTA recommended that this requirement be deleted, and the rule require a presentation of the plan to the school board upon approval by a majority of the classroom teachers.

Agency Response. The agency agrees in principle with this interpretation and modified the language in subsection (e)(6) to require the selected district-level planning and/or decision-making committee to vote in advance of any school board changes to the local awards plan. A technical edit was also made to subsection (e)(6) to cross reference requirements in subsections (c) and (h) rather than (g) and (h).

Comment. The Association of Texas Professional Educators (ATPE) objected to the requirement in §102.1073(f)(1)(A) that DATE awards be tied to district goals that must increase from year to year.

Agency Response. The agency disagrees and has maintained language as published as proposed. District administrators and instructional personnel should seek performance at a level that reflects improvement from current performance. The purpose of the grant program is to improve student achievement. Performance measures should be based on the district's goals and reflect a desired result that is achievable. Districts that are unable to meet their goals will still be able to receive a grant award with the submission of a plan addressing how the district will modify its local awards plan to meet their performance measures in the next grant period. To support this policy, subsection (f)(1)(E), relating to meeting performance measures within two years, was deleted.

Comment. The TSTA commented that §102.1073(f)(7)(A) and (C) require a demonstration from the district of a strategic plan for decreasing dependence on state funds to assure long-term sustainability of the program after DATE funds expire, and a demonstration of efforts to identify additional sources of funding to support and sustain the activities of the plan. The TSTA stated that it found no legislative support or legal authority for the mandate of these additional requirements in order to be eligible for grant funds under DATE. The TSTA further commented that the matching requirement violates the most recent Texas Supreme Court decision on school finance as it diminishes a district's "meaningful discretion" as it has the effect of prohibiting some districts which cannot budget the required matching funds from even applying for a grant under DATE. [Neeley v. West Orange-Cove C.I.S.D., 176 S.W.3d 746 (Tex. 2005).] The TSTA stated that additional strings of this nature will be cost prohibitive for many districts around the state, leaving a bias toward the more property rich districts. The TSTA commented that these provisions create an unfair application process across the board and should be removed as requirements for the grant.

Agency Response. The agency disagrees and has maintained language as published as proposed. The rule requires districts to devise a strategic plan for decreasing dependence on the grant funds and identify additional support to sustain the program for planning purposes only. The rule does not mandate a school district to continue its district award plan if grant funds expire. There is no cost for planning and considering potential funding sustainability options.

Comment. Concerning §102.1073(g)(4), the Texas AFT, ATPE, and TSTA stated that the requirement of local matching funds lacks legislative foundation and serves as a deterrent.

Agency Response. The agency disagrees. The TEA has expressly been granted the authority to promulgate the necessary rules to implement the educator award grant program. Language, however, has been added in subsection (g)(4) to clarify the matching requirements to better assist districts with future planning. In order to ensure program sustainability once the grant funds are exhausted, the district grant award requires a cash or in-kind match from federal, state, or local sources. Research shows that an effective award plan will have a positive effect on curriculum and instruction, will attract and retain quality teachers, and will translate into student achievement. The TEA understands the financial burdens districts face and views the 15% cash or in-kind matching requirements and programmatic sustainability sections of the grant application as critical steps to building capacity, stakeholder support, and long-term program sustainability.

If a district must amend their district award plan because it receives less grant funding in future years, the amended award plan must be voted on again by the designated district-level planning committee and school board.

Comment. Concerning §102.1073(h)(2), the Texas AFT, TCTA, and TSTA commented that teachers who meet the criterion of positive impact on student growth should not be disqualified from receiving a bonus because of transfer or retirement. The TSTA also objected to any restriction on the appeal process under the DATE program.

Agency Response. The agency agrees in part and disagrees in part. The agency agrees that teachers who meet established criteria should not be disqualified and has included language in subsection (h)(2) barring the disqualification of teachers who have retired or were involuntarily transferred. The agency disagrees with removing language in subsection (h)(2) that restricts appeals and has maintained language as published as proposed. District-level planning committees should not circumvent or violate existing local school district grievance policies and procedures.

The new section is adopted under the Texas Education Code, §21.702, which requires the commissioner of education by rule to establish an educator excellence awards program under which school districts, in accordance with local awards plans approved by the commissioner, receive program grants from the agency for the purpose of providing awards to district employees, and §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Awards Program.

The new section implements the Texas Education Code, §21.702 and §21.707.

§102.1073. District Awards for Teacher Excellence.

(a) Establishment of program.

(1) In accordance with the Texas Education Code (TEC), §21.702, the District Awards for Teacher Excellence (DATE) is established as an annual grant program under which a school district may receive a program grant from the Texas Education Agency (TEA) for the purpose of providing awards to classroom teachers and district employees in the manner provided by the TEC, §21.705. Provisions regarding implementation of the program are described in this section.

(2) Funds from this program will be distributed to each selected school district or open- enrollment charter school that submitted an approved local awards plan developed in accordance with the TEC, §21.704, and subsection (e) of this section.

(b) Definitions.

(1) Classroom teacher--As defined in the TEC, §5.001(2).

(2) Contingency plan--An outline of alternative strategies to redistribute a school district's remaining grant funds after the school district's approved local awards plan has been implemented.

(3) Districtwide--Every campus within the school district.

(4) Local awards plan--A plan developed by a school district in accordance with the TEC, §21.704, and subsection (e) of this section that sets forth procedures for the school district's use of DATE grant funds.

(5) Meaningful, objective performance measures--Quantifiable measures that have a standardized definition and are measured and reported in the same way for every campus/school district and in the same way from year to year.

(6) Part I funds--Grant funds used to award classroom teachers who positively impact student academic improvement, growth, and/or achievement.

(7) Part II funds--Grant funds used on awards and stipends for classroom teachers, staff, principals, and other activities to improve student achievement and instructional personnel recruitment and retention.

(8) School district--For the purpose of this section, the definition of school district includes an open-enrollment charter school.

(9) Selected campus--A campus identified by a school district to receive grant funds when the district awards program is not implemented districtwide.

(10) Target campus--A selected campus that meets criteria specified in program requirements established by the commissioner of education that designate a campus as having low or underperforming student academic achievement and low student academic improvement rates. Additional criteria may take into account difficulty in finding and retaining qualified and effective teachers relative to the state or district averages. Criteria used for selection of a target campus must relate directly to the goals and performance measures of the local awards plan.

(c) District eligibility.

(1) A school district is eligible to apply for grant funds for the DATE program if the school district:

(A) completes and submits a Notice of Intent to Apply to the TEA by a date established by the commissioner;

(B) complies with all assurances in the Notice of Intent to Apply and grant application;

(C) develops a local awards plan for the district;

(D) participates in the required technical assistance activities established by the commissioner;

(E) agrees to participate for no less than two consecutive grant cycles;

(F) agrees to complete required activities during a planning year and during implementation year(s) on a timeline set forth in the program requirements established by the commissioner; and

(G) complies with any other activities set forth in the program requirements.

(2) An eligible school district must submit an application in a form prescribed by the commissioner.

(A) Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application.

(B) The commissioner may waive any eligibility requirements specified in this subsection. All waiver requests must be submitted, along with a completed application, to the TEA and meet the requirements of the TEC, §7.056.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection to receive a grant under the DATE program.

(e) Local awards plan.

(1) In accordance with the TEC, §21.704, a school district that intends to participate in the DATE program and that meets the requirements specified in the TEC, Chapter 21, Subchapter O, and this section is required to submit a local awards plan to the TEA for approval. The TEA may only approve a local awards plan that meets the program requirements specified in the TEC, §21.705, and this section.

(2) A local awards plan must:

(A) be developed by a district-level committee for a school district that intends to participate in the program, such as the district-level planning and decision- making committee established under the TEC, Chapter 11, Subchapter F;

(B) be submitted with evidence of significant teacher involvement in developing the plan demonstrated by, but not limited to, providing the names of the teachers serving on the selected district-level planning and/or decision-making committee, the campus majority vote count for selected campuses, and an assurance of the vote from the school district superintendent in the completed application;

(C) define criteria that will be used to identify which teachers, of those eligible, will receive awards. The criteria must be quantifiable and applicable to established meaningful, objective performance measures. The criteria must address student academic improvement, growth, and/or achievement;

(D) establish meaningful, objective performance measures, as defined in subsection (b)(5) of this section, for the school district and the selected campuses. At least one measure must relate to student academic improvement, growth, and/or achievement;

(E) identify campus participation districtwide or for selected campuses, as defined in subsection (b) of this section. If the school district identifies selected campuses then:

(i) a majority of classroom teachers assigned to a campus that is selected by the district-level planning and/or decision-making committee to participate in the program must approve participation to be included in the local awards plan; and

(ii) more than half of the selected campuses must be target campuses, as defined in subsection (b) of this section;

(F) establish teacher eligibility requirements that are consistent for no less than two consecutive grant cycles;

(G) make information available to the public on the methodology used to determine award amounts and timelines for the duration of a school district's participation in the grant program; and

(H) include a contingency plan designed to redistribute any remaining, unawarded Part I and Part II program funds, in accordance with the percentage distributions specified in the TEC, §21.705, and subsection (h) of this section.

(3) The local school board must approve the local awards plan, changes to the local awards plan, and the grant application prior to submission to the TEA. A school district must act pursuant to its local school board policy for submitting a local awards plan and grant application to the TEA.

(4) A decision by a local school board to approve and submit its local awards plan and grant application may not be appealed to the commissioner.

(5) A school district may renew its local awards plan for three consecutive school years without resubmitting a full grant application to the TEA.

(6) A school district may amend, with a majority vote by the selected district-level planning and/or decision-making committee and with TEA approval, its local awards plan in accordance with subsections (c) and (h) of this section for each school year the school district receives a program grant.

(f) Conditions of operation.

(1) A school district must identify performance measures in the application for the success of the local awards plan. The performance measures:

(A) must directly relate to the school district goals and criteria for selecting targeted campuses;

(B) must include measures of student academic improvement, growth, and/or achievement;

(C) may relate to improved teacher attrition, migration, and quality;

(D) must include targets for school district performance and specifically for target campuses, if the district program is not districtwide; and

(E) must be in accordance with program guidelines established by the commissioner.

(2) A school district may not reduce the number of previously established performance measures at any time during the school district's participation in the DATE grant.

(3) A school district may not remove a performance measure from the local awards plan earlier than two grant cycles from the time the performance measure was established for the purposes of the grant.

(4) Each performance measure must be set at a level that reflects improvement from current performance for the school district and among target campuses.

(5) If a school district fails to meet performance measures, the school district must submit a plan to the TEA for approval by the commissioner addressing how the district will modify its local awards plan to meet performance measures. The commissioner may require the school district to participate in required technical assistance in modifying its local awards plan.

(6) If a school district fails to meet performance measures or other TEA requirements, the commissioner may disqualify a school district from receiving a grant award from the DATE program the subsequent grant year.

(7) A school district shall demonstrate and provide information to the TEA, in the application, on the following:

(A) a strategic plan for decreasing dependence on the state funds to assure long-term sustainability of the program after the DATE grant funds expire;

(B) an ongoing process for evaluating the local awards plan and activities to be performed under the DATE grant, including measurement of progress toward the approved goals and measurable objectives to help improve program performance and support sustainability; and

(C) efforts to identify additional cash and in-kind contributions to support and sustain the activities of the local awards plan.

(8) A school district must maintain campus teacher attendance records, meeting minutes, or other similar evidence of significant teacher involvement from campuses required to hold a majority vote for approval of the local awards plan.

(g) Amount of grant awards.

(1) In accordance with the TEC, §21.703, each school district with a TEA-approved local awards plan is entitled to a grant award in an amount determined by the commissioner.

(2) In accordance with the TEC, §21.703(a)(2)(B), an award determination will be based on the average daily attendance (ADA) of participating districts in relation to the total number of eligible and applying districts.

(3) Award amounts may vary from one year to the next.

(4) A school district must provide a 15% cash or in-kind match. Matching funds must be used to supplement or support activities identified in the district grant application and local awards plan. The commissioner may disqualify a school district from current and future grant awards for the DATE program and recover allocated grant funds if a school district fails to allocate or provide matching funds. A decision to disqualify a school district or recover funds is final and may not be appealed.

(h) Award payments.

(1) A school district must distribute a specified percentage of its program grant award to eligible classroom teachers districtwide or on selected campuses who meet the local awards plan criteria in accordance with the TEC, §21.705, and this section. Each grant award must be spent in two parts.

(A) Part I funds must make up at least 60% of the total grant allocation and be used to award classroom teachers who meet the local awards plan criteria. Awards under this subsection:

(i) may be used only for classroom teachers that positively impact student academic improvement and/or growth; and

(ii) must be distributed in accordance with the local awards plan developed in accordance with subsection (e) of this section.

(B) Part II funds must make up the remaining amount of the funds, a maximum of 40% of the total grant allocation. In accordance with the TEC, §21.705, Part II funds can be used for other allowable activities as identified in program requirements.

(2) A school district may choose to exclude a teacher on a selected campus from receiving an award except involuntarily transferred teachers or retired teachers no longer on the selected campus. In such an instance, the local awards plan must reflect the district policies with regard to such a teacher at the program start date. A decision to exclude certain teachers from receiving an award may not be appealed to the commissioner.

(3) Annual award amounts should be equal to or greater than $3,000, unless otherwise determined by the local school board. Minimum awards must be no less than $1,000 per teacher identified under Part I funds. A local school board decision on award amounts per teacher is final and may not be appealed to the commissioner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 8, 2008.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER I. LICENSES

22 TAC §535.92, §535.95

The Texas Real Estate Commission (TREC) adopts amendments to §535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education (MCE) Requirements and §535.95 concerning Miscellaneous Provisions Concerning License or Registration Renewals. The amendment to §535.92 is adopted with changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2474). The proposed changes to §535.92(h) were needed to provide consistency with changes made in proposed §535.62 and §535.71. The proposed amendments to §535.62 and §535.71 are being withdrawn and the change to §535.92(h) is no longer needed. Section 535.95 is adopted without changes.

The amendments to §535.92(f) change the procedure for licensees who choose to pay an MCE deferral fee under §1101.457, Texas Occupations Code to defer MCE requirements for an additional 60 days after the date the license is renewed. If a licensee fails to timely pay the deferral fee or fails to complete the MCE requirements within the 60-day period, the license will be placed on inactive status. To reactivate the license, the licensee must pay an additional $250 fee, pay the original $200 deferral fee, complete the MCE requirements, certify that the licensee has not engaged in real estate brokerage activity, and pay the appropriate change fee.

The amendments to §535.95 clarify recent amendments to the Real Estate License Act (the Act), Texas Occupations Code, Chapter 1101, enacted by House Bill 1530, 80th Legislative Session, Regular Session, regarding fingerprinting requirements. The amendments would clarify fingerprinting procedures in cases where a licensee renews a license, has been fingerprinted, and the fingerprints have been rejected by the DPS or the FBI. The amendments amend the text of the title of the section and authorize the commission to renew a salesperson or broker license on active status if the licensee has provided at least one set of fingerprints to the Department of Public Safety (DPS), the fingerprints were rejected by the DPS or the Federal Bureau of Investigation (FBI), and the licensee has met all other requirements for renewal of the license including paying a renewal fee and completing or properly deferring MCE (MCE) requirements. In some cases the DPS or the FBI requires that the licensee, at no additional cost, submit additional data or more fingerprints if the first set of fingerprints were rejected for technical reasons. The amendments authorize the commission to issue the license in such cases if the licensee has otherwise complied with all other renewal requirements and require the commission to notify the licensee that the licensee needs to contact the DPS to submit additional fingerprints. The rule authorizes the commission to take disciplinary action against a licensee for failing to provide the requested data in a timely manner.

The reasoned justification for §535.92(f) as adopted is greater efficiency because fewer cases will be referred to enforcement for persons who fail to comply with the late MCE requirements, as such licenses will automatically go on inactive status if the licensee fails to timely comply.

The reasoned justification for §535.95 as adopted is that applicants for renewal who have complied with all requirements for renewal, but whose fingerprints have been rejected by the DPS or the FBI due to technical difficulties, may be issued a license,

and the Commission will be able to obtain new fingerprints or other information necessary for renewal after the license is issued.

No comments were received regarding the amendments to §535.92(f) or §535.95 as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

(a) A renewal application is timely filed if it is received by the commission or postmarked on or before the expiration date of the license. If the license expires on a Saturday, Sunday or other day on which the headquarters office of the commission is not open for business, the renewal application is timely filed if the application is received or postmarked no later than the first business day after the expiration date of the license.

(b) If an application is filed within one year after the expiration of an existing license, the commission may issue the new license prior to completing the investigation of any complaint pending against the applicant or of any matter revealed by the application. The commission may thereafter initiate an action to suspend or revoke the license after notice and hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(c) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate notice to the licensee as prescribed by §535.91 of this title (Relating to Renewal Notices). If the licensee is subject to mandatory continuing education (MCE) requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive licensee who has failed to furnish the commission with the person's permanent mailing address or a corporation, limited liability company or partnership that has failed to designate an officer, manager or partner who meets the requirements of the Real Estate License Act (the Act).

(d) A licensee shall renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(e) The commission may not renew a license issued to a corporation, limited liability company or partnership unless the corporation, limited liability company or partnership has designated an officer, manager or partner who meets the requirements of the Act, including satisfaction of MCE requirements. No person may act as designated officer, manager or partner if the person has failed to meet MCE requirements. For the purpose of this section, MCE requirements for the designated officer, manager or partner must be satisfied during the term of any individual broker license held by the officer, manager or partner. A designated partner who is not licensed individually as a broker must complete MCE required for a two-year license within the term of the partnership's license in order to renew the license of the partnership. If the individual real estate broker license of a designated partner expires, the partnership may only renew its license if the designated partner has satisfied MCE requirements that would have been imposed if the license of the designated partner had not expired.

(f) Notwithstanding any provisions of the Act to the contrary, when a licensee in an active status files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable MCE requirements, the commission shall renew the current license in an active status.

(1) If the licensee has not completed MCE requirements prior to the expiration of the current license, the licensee must, within 60 days after the effective date of the new license, pay an additional MCE deferral fee of $200 AND complete the required number of MCE hours.

(2) If, within 15 days after the end of the 60 day period set out in paragraph (1) of this subsection, the commission has not been provided with evidence that the licensee has completed the required number of MCE hours and paid the MCE deferral fee of $200, the renewed license shall be placed on inactive status.

(3) In order to reactivate a license placed on inactive status under this subsection, the licensee must:

(A) provide the commission with evidence that the licensee has completed the required MCE hours;

(B) certify, on a form acceptable to the commission, that the licensee has not engaged in activity requiring a license at any time after the license became inactive;

(C) complete and submit a Request to Return to Active Status Form if a broker or a Salesperson Sponsorship Form if a salesperson and pay the appropriate fee;

(D) if the license was placed on inactive status because the licensee failed to timely pay the $200 MCE deferral fee required by paragraph (1) of this subsection, the licensee must, because the licensee received the benefits of the 60-day deferral, pay the $200 MCE deferral fee; and

(E) pay a late reporting fee of $250.

(4) For the purpose of this section, a renewed license is effective the day following the expiration of the current license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license.

(g) Credit will not be given for attendance of the same course more than once during the term of the current license or during the two-year period preceding the filing of an application for late renewal or return to active status. Each licensee attending all sessions of a course shall sign the course completion roster, MCE Form 8-4 and provide the information required for each licensee on the form. A real estate licensee may receive partial credit for partial attendance at an MCE elective credit course if the provider permits partial credit and the provider and student verify attendance on MCE Form 14-0, Individual MCE Partial Credit Request Form. A false statement to the commission concerning attendance at an MCE course will be deemed a violation of the Act and of this section.

(h) A course taken by a Texas licensee to satisfy continuing education requirements of another state may be approved on an individual basis for MCE elective credit in this state upon the commission's determination that:

(1) the Texas licensee held an active real estate license in the other state at the time the course was taken;

(2) the course was approved for continuing education credit for a real estate license by the other state and, if a correspondence course, was offered by an accredited college or university;

(3) the Texas licensee's successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof as is satisfactory to the commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for MCE credit in this state; and

(5) the Texas licensee has filed MCE Form 10-2, MCE Credit Request for an Out of State Course Credit Request, with the commission.

(i) To request MCE elective credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit, a licensee shall file MCE Form 12-2, Individual MCE Credit Request for State Bar Course.

(j) Real estate licensees may receive MCE elective credit for core real estate courses or core real estate inspection courses that have been approved by TREC or that are accepted by TREC for satisfying educational requirements for obtaining or renewing a license. Core real estate courses must be at least 30 classroom hours in length to be accepted for MCE elective credit.

(k) A course taken by a licensee to obtain any of the following professional designations, or any other real estate related professional designation course deemed worthy by the commission, may be approved on an individual basis for MCE elective credit if the licensee files for credit for the course using MCE Form 15-0 Individual MCE Elective Credit Request for Professional Designation Course and provides the Commission with a copy of the course completion certificate.

(1) ABR--Accredited Buyer Representative

(2) CRE--Counselor in Real Estate

(3) CPM--Certified Property Manager

(4) CCIM--Certified Commercial-Investment Member

(5) CRB--Certified Residential Broker

(6) CRS--Certified Residential Specialist

(7) GRI--Graduate, Realtor Institute

(8) IREM--Institute of Real Estate Management

(9) SIOR--Society of Industrial and Office Realtors

(l) Effective September 1, 2007, a member of the Texas Legislature who is a licensee need only take three (3) hours in legal ethics to the satisfy the legal mandatory continuing education requirements. To obtain an exemption, the licensee must be a current member of the Legislature.

(m) If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the requirements of this section and §535.91 of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loretta DeHay

General Counsel and Assistant Administrator

Texas Real Estate Commission

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For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to §535.101 regarding Fees without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2476). The text of the rule will not be republished.

The amendments add a fee charged by the Federal Bureau of Investigation for a national criminal history check in connection with a license renewal. The fee is variable, but is currently set at $19.25. The amendments also impose a late reporting fee of $250 for licensees who fail to timely comply with the requirements of 22 TAC §535.92(f). Under §1101.457, Texas Occupations Code, a licensee may pay a $200 MCE deferral fee to defer MCE requirements for an additional 60 days after the date the license is renewed. If a licensee fails to timely pay the deferral fee or fails to complete the MCE requirements within the 60-day period, the license will be placed on inactive status under amendments to 22 TAC §535.92(f) (adopted elsewhere in this issue of the *Texas Register*). To reactivate the license, the licensee must pay the $250 late reporting fee, pay the original $200 deferral fee, complete the MCE requirements, certify that the licensee has not engaged in real estate brokerage activity, and pay the appropriate change fee.

The reasoned justification for the rule as adopted is to provide for a national criminal history check to be conducted on every renewal of a real estate salesperson and broker license as required by law, and that fewer cases will be referred to enforcement for persons who fail to comply with the late MCE requirements as such licenses will automatically go on inactive status if the licensee fails to timely comply.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101 and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER D. PERMIT RENEWALS

30 TAC §116.315

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §116.315 *without changes* to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9533) and will not be republished.

The amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission has adopted revisions to Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, §116.315, Permit Renewal Submittal, as a result of passage of Senate Bill 1673 (SB 1673), 80th Legislature, 2007. This legislation amended Texas Health and Safety Code (THSC), §382.055, Review and Renewal of Preconstruction Permit. SB 1673 allows the commission to process a renewal application at the same time as an amendment for a preconstruction permit, provided the amendment application is filed not more than three years before the date the permit is scheduled to expire and is subject to notice requirements under THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing. In order for the commission to process a renewal application concurrently with such an amendment application, the applicant must not object. The changes to THSC, §382.055 became effective May 9, 2007. Guidance documents will be updated to clarify that the notice must be clear that the actions include both the renewal and amendment and that both fees must be paid, even if the actions are processed concurrently.

SECTION DISCUSSION

§116.315. Permit Renewal Submittal.

The commission adopts the modification of this section to account for applications that can be submitted earlier than 18 months prior to the expiration of the permit. The commission adopts the addition of a description of the SB 1673 prerequisites for processing a renewal application concurrently with an amendment application. The commission also adopts the deletion of a reference to the May 1, 2004, effective date, as it is no longer needed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendment does not meet the definition of a "major environmental rule" as defined in that statute. According to Texas Government Code, §2001.0225(g)(3), a "major environmental rule" is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this rulemaking is to implement SB 1673, passed during the 80th Legislature, 2007. This legislation allows the commission to process a renewal application at the same time as an amendment provided the amendment application is filed not more than three years before the date the permit is scheduled to expire, is subject to notice requirements under THSC, §382.056, and the applicant does not object. In addition, the regulatory analysis requirements of Texas Government Code, §2001.0225, only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the adoption will amend the commission rule regarding permit renewal application submittals that will allow renewal applications to be processed by the commission concurrently with amendment applications provided certain conditions are met. This adoption therefore does not exceed an express requirement of federal law. The amendment will implement changes to THSC, §382.055 as a result of passage of SB 1673 in the 80th Legislature, 2007. The amendment is needed to implement state law but does not exceed those new requirements. The rule does not involve a delegation agreement or contract between the state and federal government to implement a state and federal program. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.0518, 382.055, and 382.056.

The commission solicited comments on the draft regulatory impact analysis determination and no comments were received.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the rule. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitu-

tion or the Texas Constitution. The rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the government action. Therefore, the rule will not cause a "taking," as defined under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission solicited comments on the consistency of this rulemaking, but no comments on the CMP were received.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amended sections are applicable requirements under the Federal Operating Permits Program, but no revisions to operating permits will be required as a result of this rulemaking.

PUBLIC COMMENT

The proposed revisions were published in the December 21, 2007, issue of the *Texas Register*. A public hearing on the proposal was held in Austin on January 29, 2008, at the TCEQ. No comments were received at the public hearing. The commission received written comments from the EPA during the public comment period, which closed on February 4, 2008.

EPA suggested modifications to the rules as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

The EPA commented that requirements relating to public notice and comment procedures for renewing and amending a permit concurrently must meet all federal requirements. It also noted that the more stringent of the renewal and amendment public notice procedures must be used. The EPA expressed concern that the public notice requirements should not be relaxed if a renewal and amendment is processed concurrently.

The requirements concerning the concurrent processing of renewals and amendments meet all federal requirements and the associated public notice requirements have not been relaxed. In a concurrent review, the renewal and amendment applications could be noticed together and would require publication in a newspaper with at least a 30-day public comment period, which are required under federal rules. The purpose of this rulemaking is to implement the statutory change to THSC, §382.055, that establishes the timing of permit renewals and does not change public notice requirements or permit fees. No change has been made as a result of this comment.

The EPA commented that earlier versions of §116.315 have been submitted for SIP approval on September 4, 2002, and September 25, 2003, but have not yet been approved by the EPA. The EPA stated that other related pending reviews for SIP approval include revisions to §§116.310, 116.311, 116.312, 116.313, 116.314, and revisions to 30 TAC Chapter 39 submitted December 15, 1995; July 22, 1998; October 25, 1999; September 4, 2002; October 4, 2002; and September 25, 2003. The EPA commented that the revision to §116.315 cannot be processed until the EPA has approved the previously submitted SIP revisions.

The commission anticipates that this SIP revision can be processed simultaneously with previous revisions governing permit review and public notice. While this amendment adds language to §116.315 concerning the concurrent processing of renewals and amendments, this amendment does not change the intent of the existing rule language that was submitted to the EPA in previous SIP revisions. No change has been made as a result of this comment.

The EPA asked for clarification regarding public notice references and suggested that the current language does not clearly state what is required. EPA asked if THSC, §382.056, requirements are implemented under Chapter 39. It also stated that if THSC, §382.056, requirements are implemented under Chapter 39, the concerns provided in a letter dated August 14, 2006, concerning public participation should be addressed.

Reference to THSC, §382.056, in amended §116.315 follows the text of SB 1673. This rulemaking provides an alternative means of submitting and reviewing renewal and amendment applications concurrently; however, it does not alter or eliminate the requirements for public notice as required in Chapter 39. The requirements in THSC, §382.056 are implemented under Chapter 39. Commission staff is in the process of reviewing the EPA's concerns with the October 25, 1999, SIP revision as expressed in the EPA's August 14, 2006, letter. While this amendment addresses public participation, it does not change the existing rule language that was submitted to the EPA in previous SIP revisions. No change has been made as a result of this comment.

The EPA commented that §116.315(c) should further explain what an application and fee for renewals and amendments entails by including cross references to the appropriate regulatory requirements. EPA also stated that clarification was needed as to what fees would be incurred during concurrent renewal and amendment review. EPA also requested that the agency provide a statement of basis for the decision of which fee must be paid.

As stated in the previous response, the purpose of this rulemaking is to implement the statutory change to THSC, §382.055 that establishes the timing of permit renewals. Concurrent processing of a renewal and an amendment does not change the fee amount from what it would have been if they were processed separately, but the fees would be due when the applications are submitted. Since one fee amount was not chosen over another, a statement of basis was not provided. No change has been made as a result of this comment.

The EPA discouraged the inclusion of §116.315(b) that granted executive discretion to allow a variance from the six-month renewal application deadline and asked for replicable provisions to determine when a variance would be allowed. EPA also requested clarification as to whether a timely submittal of a renewal application under §116.315(a) or (b) allows the permit to remain in effect in the event that the action on the renewal request is not completed prior to the expiration date.

The basis of the inclusion of §116.315(b) is not within the scope of this rulemaking. Variances are allowed in instances where

the executive director did not send out a timely renewal notice. It is also possible for an applicant to request an extension. If the request was provided before the expiration date to allow for executive director approval, and if the executive director approves the request, a variance may be allowed. As long as the agency receives the renewal application before the expiration date, the application is considered timely and the applicant can continue to operate under the original permit until the permit is renewed. Issuance of the renewal does not necessarily have to occur before the expiration date in order for the permit to remain in effect. No change has been made as a result of this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, which authorizes the commission to issue permits for modification to an existing facility that may emit air contaminants; §382.055, which authorizes the commission to review and renew preconstruction permits according to a specific schedule; and §382.056, which authorizes the commission to require applicants for a permit amendment or permit renewal to publish notice of intent to obtain the authorization.

The amendment implements TWC, §5.103, THSC, §§382.011, 382.012, 382.017, 382.0518, 382.055, and 382.056, and SB 1673, 80th Legislature, Regular Session, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802427
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: December 21, 2007
For further information, please call: (512) 239-0177

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts the amendments to §§305.43, 305.62, and 305.70 *with changes* to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8681) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking provides applicants a method of requesting a substantive change to a permitted municipal solid waste (MSW) facility through submittal of only those portions of a permit affected by the proposed change. These adopted rules specify that under certain criteria, the application, review, and any subsequent hearing for some substantive permit changes are limited to the specific requested change and directly related issues. This applies to most changes that currently meet the definition of a major amendment for an MSW facility.

This rulemaking also adopts additional changes to: 1) definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; 3) require public notice for some modifications which previously did not require notice and to require a major amendment for some permit actions previously processed as a modification with public notice; and 4) clarify that for municipal solid waste facilities, it is the duty of the owner of a facility to submit an application for a permit unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application.

Concurrent with this rulemaking, the commission adopts amendments to 30 TAC Chapter 330, Municipal Solid Waste, to revise the notice requirements for new permits and major amendments, and to revise the distance that public notice would be required for certain actions on permits and registrations.

SECTION BY SECTION DISCUSSION

Section 305.43, Who Applies

The commission adopts amendments to §305.43(a) to make a grammatical change; adopts the amendment to §305.43(b) by adding the word "industrial"; and adopts the addition of §305.43(c) to clarify that for MSW applications it is the duty of the owner of a facility to submit an application, unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit new applications. For a new facility, the operator may submit an application for a permit with the written consent of the owners of the land.

Section 305.62, Amendment

The commission adopts amendments to §305.62 to correct the reference to the title of §305.70 by changing Municipal Solid Waste Class I Modifications to Municipal Solid Waste Permit and Registration Modifications.

The commission adopts §305.62(i) to identify that a full permit application must be submitted if the permittee proposes an increase in the facility maximum permitted elevation or lateral extent, an increase in waste capacity, or upgrade of a facility to meet federal Subtitle D standards. The commission determined that some substantive changes to facility design or operation, such as an alternate liner design or the acceptance of a new waste stream, may in some circumstances have little or no impact on the surrounding community, and could effectively be addressed through a new processing type referred to as a "limited application." The rule also allows other substantive changes to the permit to be proposed by submittal of only related permit documents and attachments. In these cases, a contested case hearing or other procedure related to the amendment would be limited to only the requested amendment and the related permit documents and attachments. The rule is revised from proposal to: 1) remove reference to the term "site operator"; 2) allow a lateral expansion for the purpose of adding to the buffer zone through a permit modification with public notice; 3) clarify reference to the volumetric capacity of a landfill and the maximum daily rate of waste acceptance at a Type V processing facility;

and 4) clarify that the scope of any hearing or proceeding for major amendments submitted as a limited application is limited to only the portions of the permit and attachments to which changes are being proposed.

The commission deletes §305.70(m) and adopts §305.62(j) to move criteria related to temporary authorizations with adopted amendments to clarify an existing practice that temporary authorizations for MSW facilities may include actions that would be considered to be either major amendments or permit or registration modifications. The reference to an extension for six months for varying seasonal or climatic conditions was deleted because it was redundant and unnecessarily limiting.

Section 305.70, Municipal Solid Waste Permit and Registration Modifications

The commission adopts the amendment to §305.70(a) - (c), (e) - (g), (i) - (k), and (m). Subsection (n) has been relettered to §305.70(m). The adopted changes are discussed in the following paragraphs.

The commission adopts amended §305.70(a) to remove applicability dates for a 2001 - 2002 rulemaking and add rule applicability for applications filed prior to the effective date of these adopted rules.

The commission adopts amended §305.70(b) to reflect revised Chapter 330 rule citations, resulting from a rulemaking effective March 27, 2006.

The commission adopts amended §305.70(c) to remove a reference to the waste capacity increase in §305.70(k) which has been deleted from this adopted rulemaking, and clarifies that an increase in the waste acceptance rate at Type V processing facilities requires a major amendment for permitted facilities or a new registration for registered facilities. The rule was revised from proposal to remove reference to increases in landfill capacity, which are addressed in adopted §305.62(i). A reference to the applicable provisions in Chapter 330 for addressing increases in the waste acceptance rate at landfill facilities is adopted and the rule is revised from proposal to include reference to the section title. The commission determined that design and operational standards and other information provided in the Type V permit or registration application are based on a maximum waste acceptance rate and that these facilities have a much lesser ability to accommodate increases in waste acceptance than landfills, which are limited by total capacity.

The commission adopts amended §305.70(e)(3) and (5) to reflect revised Chapter 330 rule citations resulting from a rulemaking effective March 27, 2006.

The commission adopts amended §305.70(f) to clarify the number of marked and unmarked applications which must be submitted for a modification and how the copies are to be distributed between the Central and Regional TCEQ offices. A revised Chapter 330 rule citation, resulting from the rulemaking effective March 27, 2006, replaces the existing citation.

The commission adopts amended §305.70(g)(2) and (2)(A) and (B) which is revised from proposal to provide grammatical changes and include reference to comments that are timely filed.

The commission adopts amended §305.70(i) which is revised from proposal to provide clarification on the current landowner's list and to require that the Web site address for the application be provided in the mailed notice.

The commission adopts amended §305.70(j) which is revised from proposal to add clarification that modifications processed under this section do not require public notice and to renumber the paragraphs.

The commission adopts amended §305.70(j)(1), (4), (7), (9) - (11), (16), (18) - (22), (26), (27), and (30) (which were previously proposed as §305.70(j)(1), (4), (6), (8) - (10), (13) - (18), (22), (23), and (25), and which included reference to deleted paragraphs). The rule was revised from proposal to add new provisions under §305.70(j)(6), (12), (13), (17), and (28). Section 305.70(j)(1) - (33) is renumbered as §305.70(j)(1) - (32) (which was previously proposed as §305.70(j)(1) - (27)).

The commission adopts amended §305.70(j)(1) to refer to "cell" rather than "trench" to reflect current industry terminology regarding waste containment structures.

The commission adopts amended §305.70(j)(4) to restrict applicability to increases in sampling frequency. A modification which would require public notice for changes which decrease sampling frequency is adopted as §305.70(k)(5) (which was previously proposed as §305.70(k)(4)).

The commission deletes §305.70(j)(6) and the language is moved with revisions to §305.70(j)(28) (which was previously proposed as a modification requiring public notice in §305.70(k)(6)).

The commission adopts new §305.70(j)(6) which was added from proposal to allow changes to existing landfill underdrain or dewatering systems that maintain or improve effectiveness.

The commission adopts amended §305.70(j)(7) (which was previously proposed as §305.70(j)(6)) to remove examples of facilities or activities that could be added or deleted through a permit or registration modification without public notice. Requests to add or delete these facilities or activities had not been received by the commission and the language is removed only for purposes of brevity. The paragraph was revised from proposal to make a grammatical change.

The commission adopts §305.70(j)(8) (which was previously proposed as §305.70(j)(7)) for changes in the site layout, other than entry gate location, that relocate building locations.

The commission adopts amended §305.70(j)(9) (which was previously proposed as §305.70(j)(8)) to clarify applicability only to a solidification basin which was previously authorized.

The commission deletes §305.70(j)(10) which related to changes to a permit or registration regarding minimum performance based requirements for personnel or equipment. This was proposed for permanent deletion but is moved with language revisions to §305.70(j)(17).

The commission adopts amended §305.70(j)(10) (which was previously proposed as §305.70(j)(9)) to remove the ambiguity associated with the term "significantly" and to delete applicability to changes in final contours, which are the subject of adopted §305.70(k)(9) (which was previously proposed as §305.70(k)(7)).

The commission adopts §305.70(j)(11) (which was previously proposed as §305.70(j)(10)) to reflect revised Chapter 330 rule citations, resulting from a rulemaking effective March 27, 2006.

The commission adopts §305.70(j)(12) (which was previously proposed as a modification requiring public notice in §305.70(k)(10)) which was added from proposal to specify that

changes in the sequence of landfill development may be authorized without public notice unless the changes would potentially affect the adjacent property owners or the community.

The commission deletes §305.70(j)(13) and moves the provision for changes to final contours and slopes to adopted §305.70(k)(9) (which was previously proposed as §305.70(k)(7)), which will require public notice.

The commission adopts §305.70(j)(13) which was added from proposal to allow changes in the perimeter access control system that do not reduce system effectiveness in controlling access to the site.

The commission adopts §305.70(j)(14) (which was previously proposed as §305.70(j)(11)) for corrections in the metes and bounds description of the permit or registration boundary.

The commission adopts §305.70(j)(15) (which was previously proposed as §305.70(j)(12)) for changes in the facility records storage area to an off-site location.

The commission adopts amended §305.70(j)(16) (which was previously proposed as §305.70(j)(13)) to more accurately reflect the purpose of the compost refund plan.

The commission adopts §305.70(j)(17) which was added from proposal to allow changes to the Site Development Plan or Site Operating Plan to provide performance-based standards for personnel or equipment, or minor corrections to provide consistency within the permit.

The commission adopts §305.70(j)(18) (which was previously proposed as §305.70(j)(14)) regarding the installation of replacement monitoring wells.

The commission adopts amended §305.70(j)(19) (which was previously proposed as §305.70(j)(15)) to remove applicability to the installation of a new leachate collection system. This activity would require public notice and be processed under adopted §305.70(k)(11) (which was previously proposed as §305.70(k)(8)).

The commission adopts amended §305.70(j)(20) (which was previously proposed as §305.70(j)(16)) to clarify applicability to installation of a landfill gas monitoring system when not required by permit (e.g., voluntary improvements; enforcement actions at MSW sites).

The commission adopts amended §305.70(j)(21) (which was previously proposed as §305.70(j)(17)) to clarify applicability only when changes in landfill gas monitoring system design result in equal or improved performance.

The commission deletes §305.70(j)(22) relating to liner special conditions and design constraints because it had rarely been used. Any future changes subject to the previous subsection could be processed under §305.70(l) without public notice.

The commission adopts amended §305.70(j)(22) (which was previously proposed as §305.70(j)(18)) to allow changes to an existing landfill gas collection system except as necessary to maintain compliance with standards in regulation (e.g., air performance standards), in addition to other permit requirements. The rule language allows executive director determination of the need for modification of the MSW Permit. The rule was revised from proposal to provide consistent reference to permits required by other rules and regulations.

The commission adopts §305.70(j)(23) (which was previously proposed as §305.70(j)(19)) for a new Groundwater Sampling and Analysis Plan or changes to an existing plan.

The commission adopts §305.70(j)(24) (which was previously proposed as §305.70(j)(20)) for a new waste acceptance plan or the addition of details for the acceptance of waste streams.

The commission adopts §305.70(j)(25) (which was previously proposed as §305.70(j)(21)) for revisions to an existing waste acceptance plan.

The commission adopts §305.70(j)(26) (which was previously proposed as §305.70(j)(22)), to reflect the applicable Chapter 330 subchapter, resulting from a rulemaking effective March 27, 2006. The rule was revised from proposal to allow the installation of wells of different depth and design if the wells are in addition to the wells in the existing monitoring system, and to clarify applicability of §305.62 to revised groundwater monitoring systems.

The commission adopts amended §305.70(j)(27) (which was previously proposed as §305.70(j)(23)). The rule was revised from proposal to provide applicability to landfill gas monitor wells.

The commission deletes §305.70(j)(28) and the language is moved to adopted §305.70(k)(12) (which was previously proposed as §305.70(k)(9)) which requires public notice.

The commission adopts §305.70(j)(28) for changes to closure or post closure care plans for technical corrections. A more-broadly worded provision is deleted from the list of modifications requiring public notice (previously proposed as a §305.70(k)(6)).

The commission adopts §305.70(j)(29) (which was previously proposed as §305.70(j)(24)) for substitution of an equivalent financial assurance mechanism.

The commission adopts amended §305.70(j)(30) (which was previously proposed as §305.70(j)(25)) to reflect revised Chapter 330 rule citations and headings, resulting from a rulemaking effective March 27, 2006.

The commission adopts §305.70(j)(31) (which was previously proposed as §305.70(j)(26)) for changes in the amount of financial assurance required for corrective action.

The commission deletes §305.70(j)(32) regarding sequence changes (which was previously proposed as a modification requiring public notice in §305.70(k)(10)) and moves the language to §305.70(j)(12).

The commission adopts §305.70(j)(32) (which was previously proposed as §305.70(j)(27)) for changes to the entry gate location that do not alter access traffic patterns.

The commission adopts the amendment to §305.70(k)(1) - (3), (6), and (8) (which was previously identified as §305.70(k)(1) - (3), (5), and (8)). The rule was revised from proposal to add new provisions under §305.70(k)(4), (7), and (8). Section 305.70(k)(1) - (6) is renumbered as §305.70(k)(1) - (13).

The commission adopts amended §305.70(k)(1) to reflect the revised Chapter 330 rule citation, resulting from a rulemaking effective March 27, 2006.

The commission deletes §305.70(k)(2), relating to increases in the height of a landfill. Applicable activities represent an increase in the maximum permitted height and/or an increase in waste capacity and will require a major amendment and submittal of a full permit application as described in adopted §305.62(i).

The commission adopts amended §305.70(k)(2), to reflect the applicable Chapter 330 subchapter, resulting from a rulemaking effective March 27, 2006.

The commission adopts amended §305.70(k)(3) to reflect the revised Chapter 330 rule citation and heading, resulting from a rulemaking effective March 27, 2006.

The commission deletes §305.70(k)(4), relating to upgrade of a landfill to meet the requirements in 40 Code of Federal Regulations (CFR) Part 258. An upgrade to meet 40 CFR Subtitle D standards will require a major amendment and submittal of a full permit application as described in adopted §305.62(i).

The commission adopts §305.70(k)(4) for changes to groundwater monitor well design that are consistent with the groundwater characterization and approved monitoring system design and that improve the effectiveness of the system in detecting contamination.

The commission adopts §305.70(k)(5) (which was previously identified as §305.70(k)(4)) to specify that changes that decrease sampling frequency (e.g., for groundwater and methane monitoring systems) are eligible to be authorized by a modification with public notice.

The commission adopts §305.70(k)(6) (which was previously proposed as §305.70(k)(5)) to remove a reference to the addition of a liquid waste solidification facility or a petroleum-contaminated soil stabilization area by a modification. Future requests for the addition of these facilities or areas could be processed as a limited application major amendment in accordance with §305.62. The activity identified in the proposed rule under §305.70(k)(6) for changes to closure or post-closure care plans was moved to §305.70(j)(28) and revised to allow minor changes such as for changes to closure or post-closure care plans for technical corrections.

The commission adopts §305.70(k)(7). The rule was revised from proposal to allow changes to the legal description due to the addition of property for purposes of increasing the buffer zone by a permit modification requiring public notice.

The commission adopts §305.70(k)(8). The rule was revised from proposal to allow changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity.

The commission adopts §305.70(k)(9) (which was previously proposed as §305.70(k)(7)) to specify that changes to the approved final contours and final slopes of a landfill may be authorized by modification with public notice, provided the changes do not result in a landfill height or capacity increase and there is no impact to off-site drainage.

The commission adopts §305.70(k)(10). The rule was revised from proposal to identify that alternative final cover designs may be authorized through a modification with public notice. The rule codifies an existing practice.

The commission adopts §305.70(k)(11) (which was previously proposed as §305.70(k)(8)) to specify that installation of a new leachate collection system may be authorized through a modification with public notice. The rule was revised from proposal to clarify applicability to leachate collection systems not previously authorized. The rule was further revised from proposal to move the activity identified in the proposed rule under §305.70(k)(10) (relating to changes in the sequence of landfill development) to §305.70(j)(12) with a provision that public notice would be required if the change would impact the community.

The commission adopts §305.70(k)(12) (which was previously proposed as §305.70(k)(9)) to specify that changes to post-closure use of a landfill may be authorized through a modification with public notice.

The commission adopts §305.70(k)(13) (which was previously proposed as §305.70(k)(11)) to specify that name changes or transfers of MSW permits or registrations may be authorized through a modification with public notice. Notice is to be provided after issuance, as is current practice in some other TCEQ programs. The commission determined that community interest in the operation and ownership of MSW facilities make the addition of the proposed subsection appropriate.

The commission deletes §305.70(m) and moves language related to MSW temporary authorizations to adopted §305.62(j).

The commission adopts §305.70(m) to specify that the applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn the executive director's action on a modification application.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission invited public comment regarding the REGULATORY IMPACT ANALYSIS DETERMINATION during the public comment period. No comments were received. The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to §2001.0225, because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rules is to provide applicants a method of requesting a substantive change to a permitted MSW facility through submittal of only those portions of a permit affected by the proposed change. The rules specify that under certain conditions the application, review, and any subsequent hearing for some substantive permit changes would be limited to the requested change and related materials. This will apply to most changes that currently meet the definition of a major amendment for an MSW facility. In addition, this rulemaking makes additional changes to clarify an existing practice, identify the administrative procedure for transfer of permit or registration ownership, and provide enhanced public notice and participation for some permit actions. The adopted changes: 1) definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; 3) require public notice for some modifications which currently do not require notice or require a major amendment for some permit actions currently processed as a modification with public notice; and 4) clarify that for MSW facilities, it is the duty of the owner of a facility to submit an application for a permit unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application. It is not anticipated that the adopted rules will adversely affect in

a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the adopted rules do not meet the definition of major environmental rule.

Furthermore, even if the rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these requirements. First, there are no applicable federal standards for MSW permits or registrations. Second, the adopted rules do not exceed an express requirement of state law in Texas Health and Safety Code, §361.061 and §361.079. Third, there is no delegation agreement that would be exceeded by the adopted rules. Fourth, the commission adopts these rules under the specific authority of Texas Health and Safety Code, §361.061 and §361.079. These rules are also proposed under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rules is to provide applicants a method of requesting a substantive change to a permitted MSW facility through submittal of only those portions of a permit affected by the proposed change; to clarify in rule the existing practice of authorizing temporary authorizations for either major or minor changes to a permit or registrations; to identify the administrative procedure for transfer of permit or registration ownership; and to provide enhanced public notice and participation for some permit actions. The adopted rules would substantially advance this stated purpose by specifying that under certain conditions the application, review, and any subsequent hearing for some substantive permit changes would be limited to the requested change and related materials. In addition, the rulemaking will: 1) definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; 3) require public notice for some modifications which currently do not require notice or to require a major amendment for some permit actions currently processed as a modification with public notice; and 4) clarify that for MSW facilities, it is the duty of the owner of a facility to submit an application for a permit unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application. Promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property because the rulemaking does not affect real property. In particular, there are no burdens imposed on private real property. In addition, the adopted rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

PUBLIC COMMENT

The commission held a public hearing in Austin on January 8, 2008. The comment period closed on January 15, 2008, and subsequently was extended to February 22, 2008, in response to requests from State Representative Richard Hardcastle and State Representative Larry Phillips.

Comments were received from McGinnis, Lochridge & Kilgore, L.L.P on behalf of Allied Waste Industries (Allied), Biggs & Mathews Environmental (B&M), Harris County Public Health & Environmental Services (HCPHES), Hutto Citizens Group (HCG), IESI TX Corporation (IESI), Indian Creek Homeowners Association of Carrollton (ICHA), Lowerre, Frederick, Perales and Allmon (LFPA), Malcolm Pirnie, Inc., San Antonio Office (MPI), National Solid Wastes Management Association (NSWMA), TCEQ Office of Public Interest Council (OPIC), Republic Waste Services of Texas, Ltd. (RWS), Russell & Rodriquez on behalf of Texoma Area Solid Waste Authority (TASWA), North Texas Municipal Water District (NTMWD), City of Arlington (COA), City of Corpus Christi (COCC), City of Dumas (COD), and City of San Angelo (SOSA), Lowerre & Frederick Attorneys at Law and Texas Campaign for the Environment (LF/TCE), Texas Disposal Systems (TDS), Texas Landfill Management (TLM), Lone Star Chapter of the Solid Waste Association of North America (TxSWANA), Waste Management of Texas, Inc. (WMTX), and seven individuals. Many commenters supported the rulemaking, however with suggested changes. Specific comments are addressed below.

RESPONSE TO COMMENTS

Scope and General Provisions

B&M stated the overall justification for the rulemaking appears to be unfounded. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that many of the proposed rules do nothing

to protect property or the environment as required by the Texas Health and Safety Code, the rules serve only to increase operator costs, the estimated fiscal impact appears to be significantly less than the actual cost to implement the rules, and that the rulemaking should be delayed for further consideration.

The commission disagrees that the rulemaking is unfounded or that it should be delayed. The commission agrees that some portions of the rule may result in higher costs for MSW facility owner/operators but believes that other portions of the rule will result in owner/operator savings. The rulemaking will better ensure identification of changes at a MSW facility which may affect property owners in the community and that individuals potentially affected by the proposed action will have an increased opportunity to comment and/or obtain information. The commission does not agree this is inconsistent with the responsibilities charged to the agency by the Texas Health and Safety Code and has adopted the rule.

Who Applies

Allied, IESI, and WMTX commented that §305.43 is consistent with the Resource Conservation and Recovery Act program and the Texas Health and Safety Code, that the rule does not have a history of problems. The same commenters and TxSWANA suggested that no changes are necessary at this time. Allied, IESI, and WMTX suggested if changes are contemplated a separate rulemaking would be appropriate and may be necessary for compliance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. HCG, one individual, LFPA, TASWA, NTMWD, COA, COCC, COD, SOSA, LF/TCE, TDS, and TLM commented that the rule should be amended to clarify the entity responsible for submitting an application. TLM commented that the rule should clarify that a contract operator does not submit the application. LF/TCE, TDS, and TLM also suggested that a separate subsection could be created to address municipal solid waste permit applications. HCG commented that the definitions in Chapters 305 and 330 should be amended to clarify terms relating to the responsibility and operation of the facility. LF/TCE stated that the rule also should clarify who is identified on the permit.

The commission agrees that the section could be clarified regarding who is responsible for submitting an application for an MSW permit and on the terminology used for the various entities.

In response to these comments, the commission has adopted changes to §305.43 to clarify that for MSW facilities, it is the duty of the owner of the facility to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application.

Statutory Authority for Subchapter D

IESI suggested a typographical change to the Statutory Authority for Subchapter D.

The commission appreciates the comment and has made the correction.

Typographical error

IESI suggested a typographical change to §305.62(a).

The commission appreciates the comment but could not identify the typographical error and did not make a change in response to this comment.

Major amendments for MSW Permits

IESI, NSWMA, and RWS stated that the reference to "owner or operator" in §305.62(i) should be changed to "permittee" to provide consistency with term used in §305.62(a). TDS commented that the rule should be revised to provide a definition of "permittee."

The commission does not agree that the rule should be amended to include another new definition due to comments requesting clarification of the party responsible for submitting an application. However, in response to these comments the commission has removed the terms "owner or operator" from the rule language.

LF/TCE commented that any increase in the hours of waste acceptance or operation hours should be processed as a major amendment. LF/TCE also commented that a full application should be required for any permit amendment in which the permit provisions being changed resulted from negotiations with a protesting party or for reopening landfills that have been inactive for five years or more.

The commission does not agree that all changes in operating or waste acceptance hours should require a major amendment. Changes within the operating or waste acceptance hours specified in MSW regulations in §330.135 may be processed through a modification with public notice. The commission agrees that changes outside these hours or the addition of a new day of operation would require a major amendment, but has not amended the rule in response to this comment. The commission does not agree that a full application should necessarily be required for a request to change permit provisions that resulted from negotiations with a protesting party. The commission acknowledges that the change would require a permit amendment as specified in §305.70(a), and the proposed change would be subject to an opportunity for a contested case hearing. If only a small portion of the permit was being affected, the requirement for a full application would be disproportionate to the proposed change and as a result, the commission has not amended the rule in response to this comment. Similarly, a major amendment would be required to reopen a landfill that has not accepted waste for five years or more but the application requirements would be subject to the requirements in §330.7(d), which restricts the permit amendment to land use compatibility in some cases. The commission has not amended the rule in response to this comment.

Increase in maximum elevation

Allied and TxSWANA commented that many sections of the permit are not impacted by vertical-only expansions and §305.62(i)(1) should be amended to allow these major amendments to be processed through submittal of only the affected portions of the permit. HCPHES stated that a full application should be required for an increase in the depth of a landfill due to the potential impact on landfill design. LF/TCE stated that the rule should be amended to include reference to any increase of any permitted elevation for a landfill and any increase in the landfill's maximum depth. TxSWANA commented that at a minimum, the rule should include an exemption from the requirement for a full major amendment application for the 10-foot height increase historically processed as a permit modification.

The commission does not agree that vertical-only expansions, including the 10-foot height increase, should be eligible for a major amendment through submittal of less than a full application and has not amended the rule in response to these comments. Depending on the facility acreage, vertical expansions can extend the life of a landfill many years into the future and it is appropriate that the entire application be updated to provide current

information on the facility and comply with any updated regulations. The commission does not agree that minor changes to excavation depth to accommodate cell construction when there is no gain in capacity should warrant submittal of a full application. The commission agrees that a significant increase in the depth of a landfill which also affects landfill design could occur but not without an increase in capacity which would require a full major amendment application. The commission has not amended the rule in response to these comments. Changes to the final contours, other than changes to the permitted maximum elevation, generally are requested to improve storm water runoff control, and may include an increase in the permitted elevation of side slopes. These changes, which previously had been processed without public notice, will be processed as a permit modification requiring public notice. The commission has not amended the rule in response to this comment.

Addition of Buffer

IESI commented that §305.62(i)(1) should be revised to clarify applicability to the permitted waste footprint. NSWMA and RWS stated that the rule should not include submittal of a full application for expansion of areas used for non-waste management activities such as buffer zone or employee parking.

The commission does not agree that expansion of any "non-waste management areas" is appropriate due to the potential for broad interpretation, but agrees that the addition or expansion of a buffer zone is beneficial to the community, and that it should not require a major amendment. The commission has amended §305.62(i)(1)(B) in response to these comments to exempt lateral expansions for the purpose of increasing the buffer zone, and has created a modification under §305.70(k) to allow the addition of property for the expansion of the buffer.

Waste Capacity

Allied, NSWMA, RWS, TASWA, NTMWD, COA, COCC, COD, and SOSA stated that the term "waste capacity" as used in §305.62(i)(1)(C) is unclear. Allied, IESI, NSWMA, RWS, and WMTX commented the rule should be amended to clarify applicability to volumetric capacity. Allied, IESI, and TxSWANA commented that the rule should be amended to allow increases in capacity resulting from design revisions (e.g., liner or final cover components) through other than a full application. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that increases in capacity are addressed in §305.62(i)(1)(A) and (B) making the subsection unnecessary. LF/TCE commented that the rule should be amended to include reference to any increase in the permitted or registered daily maximum limit of waste acceptance.

The commission agrees the rule requires clarification regarding applicability to the volumetric capacity of a landfill and the maximum processing capacity at a Type V facility, both of which historically have required a full application, and the commission has amended the rule accordingly. The commission notes that major amendments do not apply to registered facilities. The commission does not agree that all increases in capacity are already addressed in the rule because changes in depth or permitted contours can result in a capacity increase. Changes in excavation depth that result in a capacity increase and capacity increases due to design revision typically have been offset through a revision of other design details (e.g., final contours). Changes in capacity have been and will continue to be processed through submittal of a full amendment application. No changes to the rule were made in response to these comments.

Subtitle D Upgrades

RWS commented that upgrading a permitted facility to meet the requirements of 40 CFR Part 258 increases the facility's capability to protect human health and the environment and should not require a major amendment as required in §305.62(i)(1)(D).

The commission agrees that the upgrade may represent an increase in a facility's capability to be protective, but also believes the provision likely would be used for facilities that are proposing a significant change in operation or which have previously been closed, and that the authorization of these changes would more appropriately be processed through submittal of a full application. The rule was not amended in response to this comment.

Limited Applications

LF/TCE stated that submittal of a limited application to obtain a major amendment should not be allowed unless a rulemaking is initiated for either permit term limits or a periodic comprehensive review with public input. Five individuals commented that permits should have term limits to allow regular review and comment.

The commission does not agree that a rulemaking should be initiated for permit term limits or other periodic review prior to making some permit changes allowable through submittal of a limited application and has not amended the rule in response to these comments. The commission acknowledges that significant changes may be proposed through use of the rule's provision for limited applications but the changes must be protective of human health and the environment, they will be subject to an opportunity for contested case hearing, and they will not include changes that extend the life of the facility.

Allied commented that §305.62(i)(2) should be amended to clarify the rule's intent of mandatory submittal of only the portions of the permit being changed. B&M commented that it is unclear how the scope of the application will be determined. IESI commented that the rules should be revised to refer to "limited-scope major amendment" and that the rule should provide examples of allowable changes without submittal of a full application. LF/TCE, TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the rule is unclear on what changes may be eligible for submittal of a limited application to obtain a major amendment. TxSWANA commented that submittal of less than a full application for a permit major amendment may create a new avenue for appellate challenges to the agency's action.

The commission does not agree that submittal of less than a full application should be a mandatory requirement or that it is beneficial to specify a name in rule for limited scope application submittals and has not amended the rule in response to these comments. The commission anticipates that changes for which less than a full application is submitted will be limited in the range of technical issues. Upon request, the executive director's staff can help identify the parts of the application necessary to complete processing, dependent on the type(s) of change being applied for, or will make the determination if an incomplete application is submitted. Processing requests through use of a limited application has been in use historically in other agency programs and questions of scope have not been unexpectedly problematic. The commission agrees that some guidance is appropriate and has included in the rule the addition of an alternative liner design, changes in waste acceptance and operating hours outside hours identified in the rule or authorization to accept waste or operate on a day not previously authorized, and the addition of an authorization to accept Class 1 waste as examples of changes

which may be requested through submittal of a limited application. The commission does not anticipate that submittal of less than a complete application, when authorized by these rules, will result in appellate challenges to the agency's action. This is a practice which is followed in other programs within the TCEQ, and the commission is not aware of frequent litigation on this issue. One of the stated purposes of this rulemaking is to provide applicants a method of requesting a substantive change to a permitted MSW facility through submittal of only those portions of a permit application affected by the proposed change. The commission has statutory authority to adopt rules consistent with the Texas Health and Safety Code and establish minimum standards of operation for the management and control of solid waste under this chapter.

IESI commented that the rules should be revised to provide for agency consideration of design and operational issues previously adjudicated in limiting the scope of any hearing or proceeding on the application. TDS stated that the rule should be revised to clarify that applicants may use previously approved portions of applications that support the requested changes without having to resubmit the supporting application materials.

Major amendments are subject to an opportunity for contested case hearing and as such logically require that all application materials related to the requested changes be submitted as part of the application for review by the executive director and they must be available to the public. The commission does not agree that the use of or reference to previously submitted materials is acceptable or that previously adjudicated issues that will be affected by the requested changes should be considered as being outside the application process and has not amended the rule in response to comment.

HCPHES stated that the limitation on the executive director's review and any subsequent hearing or proceeding in §305.62(i)(2) should include all relevant materials and issues and should be revised to include additional information identified in §305.62(i)(3). HCPHES also commented that the term "processing" in §305.62(i)(3) could be construed as meaning only information necessary for administrative purposes and the rule should be revised to encompass any and all information requested by the executive director. LF/TCE commented that an applicant's limited submittal may not allow evaluation or a contested case hearing on other areas or features impacted as a result of the proposed changes. OPIC stated the rule should be revised to clarify applicability of a limited review, hearing, or proceeding to only major amendments subject to this section.

The commission does not agree that the limited application process will allow design or operational issues impacted as a result of the proposed changes to be exempt from evaluation or a contested case hearing, as it is the applicant's responsibility to submit any affected portions of the application.

The commission acknowledges that there may be issues that are relevant to the proposed changes that are not immediately recognized by the applicant and that all necessary application materials may be not provided in the initial submittal. If this information is not submitted it will be requested by the executive director in accordance with the rule. The commission has not amended the rule in response to this comment. The commission agrees that the limitation on the executive director's review and any subsequent hearing or proceeding should include any additional relevant materials and issues as identified in §305.62(i)(3) and also agrees that applicability of a limited review, hearing, or proceeding is only to major amendments being processed under provisions for submittal of a limited application and has revised the rule in response to these comments.

HCPHES stated that language should be added to allow the executive director to obtain information from the applicant at the request of local governments with jurisdiction, and to provide the local governments with copies of any application and materials submitted to the executive director.

The commission has not amended the rule in response to requests that the rule provide for local governments with jurisdiction to be given information or copies of materials provided to the executive director. The commission notes that there is not a corresponding requirement in Chapter 330 that applications for new permits or amendments be provided to local governments or pollution agencies with jurisdiction. These entities will be notified of the agency's receipt of an application and intent to obtain a municipal solid waste permit amendment and the application will be available online and at a public place.

Temporary Authorizations

LF/TCE commented that temporary authorizations, as identified in §305.62(j), should not include major changes to a permit and that they should be allowed only in extreme cases or unforeseen circumstances and limited to a shorter duration than is currently allowed. LF/TCE also commented that the rule should be revised to specify what materials may be authorized for limited use as an alternate daily cover (ADC) material, and should require a major amendment process to authorize any other materials proposed for use as ADC. LFPA commented that the rule should require TCEQ staff to provide the commission with regular reports on the temporary authorizations issued and the justification for issuance. TxSWANA stated that the requirement that temporary authorizations not reduce the capability of a facility to protect human health and the environment might be interpreted as meaning applicability to only minor changes in spite of rule language to the contrary and that the rule should be revised to clarify intent. IESI commented that the rule should be amended to clarify applicability of the executive director's response to a verbal request.

The commission does not agree that temporary authorizations should be restricted to minor changes and has not revised the rule in response to this comment. Actions necessary to prevent the disruption of solid waste management activities represent the most significant use of temporary authorizations. Circumstances sometimes arise that require authorization of activities considered to be a major change such as a temporary placement of waste above approved final contours, to prevent a solid waste crisis in a community. During natural disasters or emergencies situations, the executive director must have flexibility in the types and duration of allowable changes to authorize the activities necessary to protect human health and the environment. The commission does not agree that it is practical or appropriate to identify the types of allowable ADC in rule or to require a major amendment to use an ADC, and has not revised the rule in response this comment. MSW regulations provide standards for alternative daily cover including its effect on vector, fires, odors, and windblown waste and landfill owner/operators should have the flexibility to propose any number of materials if compliance with the rule can be demonstrated. The temporary authorization allows the TCEQ an opportunity to determine the material's effectiveness in the field prior to approval of permanent use. If the material meets rule requirements, it represents a minor change to landfill operation. Temporary authorizations are infrequently issued and are generally for routine purposes such as changes

in operating hours for special events. Information on temporary authorizations, as with other agency activities, is always available to the commission. Requiring that this information be provided to the commission is disproportionate to the action, and the rule was not amended in response to this comment. The commission does not agree the rule needs clarification regarding applicability to major changes or the method of request to which the executive director may provide a verbal response and has not amended the rule in response to these comments. The rule plainly states applicability to both major and minor changes and the rule's intent is to allow an expeditious processing when a verbal response from the executive director is appropriate for a request received either verbally or in writing.

Permit and Registration Modifications

B&M and TxSWANA commented that revision of the permit modification system appears unnecessary. ICHA commented that full public review of the permit should be allowed for some current modification requests. IESI commented that it would be helpful to retain a reference within §305.70 to the location of rules relating to the processing of temporary authorizations. LF/TCE commented that only changes with no potential off-site impact should be processed as a modification. TxSWANA commented that a new modification should be added to either the "j" or "k" lists of allowable modifications to provide for the relocation of "an authorized unit or area within the facility" and for the use of an alternate final cover.

The commission does not agree that revision of the regulations regarding modifications to permits and registrations is unnecessary and has proceeded with a rulemaking which includes an increase in the distance that mailed notice will be provided for certain actions relating to MSW permits and registrations, public notice for some modifications which currently do not require notice, and a major amendment for some permit actions currently processed as a modification with public notice. As part of the commission's duties in protecting human health and the environment, the commission believes it is necessary to increase the likelihood that potentially affected parties will be informed when certain changes to an existing MSW facility are being proposed. The opportunity for comment better ensures that the executive director can be provided input on any unknown or unanticipated conditions that would result from approval of a proposed activity and which may affect the decision to approve the proposed change. The commission does not agree that modification requests should open the entire permit for public review or that it is necessary to revise the rule to further address potential off-site impacts. Permit and registration modifications represent minor changes to facility operation or design. These minor changes should not result in off-site impacts and review of other portions of the permit which are not relevant to the proposed change which would unnecessarily hinder the modification process. The commission has not amended the rule in response to these comments. The commission agrees that alternative final cover designs should be included in the list of modifications which require public notice. This codifies an existing procedure for processing changes in final cover design and the commission has created a new modification to identify this activity in §305.70(k). The commission does not agree that a reference to the rules for processing temporary authorizations is necessary within §305.70 or that a modification allowing relocation of "an authorized unit or area within the facility" is appropriate due to the open definition of this term, and has not revised the rule in response to these comments.

Maximum Limit of Waste Acceptance

IESI commented that §305.70(c) should be amended to clarify applicability to landfill volume, to remove the specific regulatory citation relating to requirements for a full application for amendments, and to complete the regulatory reference to Recordkeeping Requirements in §330.125(h). LF/TCE indicated that increases in the permitted daily maximum limits of waste acceptance for facilities other than Type V facilities should be processed as a major amendment. TDS commented that if the facility has the ability to process a waste volume which exceeds a permitted or registered maximum daily limit of waste acceptance without necessitating a change in facility design, equipment, or staffing patterns, the increase should be allowed as modification without public notice. WMTX commented that the rule should be amended to delete reference to an increase in landfill capacity and should include reference to §305.62(i)(2) for Type V major amendment applications to provide consistency between the two sections.

The commission does not agree that Type V facilities should be allowed to increase the maximum waste acceptance rate by any means other than a full application for a permit amendment or a new registration and has not amended the rule in response to these comments. Many Type V facilities currently in operation were authorized prior to the last two major revisions of application requirements in Chapter 330. The daily limit of maximum waste acceptance is one of the few substantive or limiting provisions for Type V operations. Many of these facilities could increase the waste acceptance rate exponentially with few or no design changes but with a large potential for an impact to the surrounding community. It is therefore appropriate and has been the historic practice in the program to require that the entire application be updated to provide current information and ensure compliance with current regulations. The commission does not agree that a change in the waste acceptance rate for facilities other than Type Vs should require a major amendment. This was clarified in the March 2006 Chapter 330 revisions and today's rule was not amended in response to this comment. The commission agrees that deletion of the reference to the landfill capacity is appropriate and has amended the rule both in response to this comment and to provide consistency with the waste capacity increases described in §305.62(i). The commission also has completed the regulatory reference to §330.125(h) in response to comment.

Application processing

HCPHES stated that local governments with jurisdiction should be provided a copy of any materials provided to the executive director, consistent with the 2006 revisions of Chapter 330. LF/TCE commented that the rule should be revised to require that the applicant also submit two unmarked copies and one marked copy to the TCEQ regional office.

The commission does not agree that §305.70(f) should require applicants to provide local governments with jurisdiction copies of all materials submitted to the executive director or that the applicant be required to provide other copies in addition to what is currently required to the TCEQ regional office and has not amended the rule in response to these comments. Chapter 330 was revised in March 2006 to require that any application that requires public notice be placed on the internet. Interested persons and local regulating entities will receive the Notice of Application and Preliminary Decision and may view the application online. The commission has amended §305.70(i) to require that

the mailed notice provide the Web site address where the modification application may be viewed.

IESI commented that §305.70(g) should be amended to provide reference to the more general section on amendments to allow future flexibility, stated that rule language should be revised to refer to the timely receipt of public comments and offered grammatical and a clarifying change to §305.70(g)(2).

The commission does not agree that the more general reference to §305.62, which discusses other than major amendments, is more appropriate than the existing reference to §305.62(c) which defines a major amendment, and has not revised the rule in response to this comment. The commission agrees the rule intends reference to comments that are timely received, and has amended the rule to include this reference and the suggested grammatical changes.

IESI suggested a typographical change to §305.70(i). One individual stated the rule should clarify if the landowner's list is to be current when the application is submitted or upon the completion of technical review.

The commission appreciates the comment and has made the typographical change. The commission agrees that the rule should be clarified to require that the landowner's list be current as of the date it is submitted to the executive director and has amended the rule in response to this comment.

Modifications which do not require public notice

Allied and TxSWANA commented that the rule should be amended to clarify that modifications processed under this section do not require public notice. Five individuals stated that many non-notice modifications should require public notice. LF/TCE stated that all modifications should require some form of public notice.

The commission agrees that the rule should be amended to clarify that modifications processed under §305.70(j) do not require public notice and has revised the rule in response to this comment. The commission does not agree that all changes should require some form of public notice. No specific activity was identified by the individual commentors as inappropriate for processing without public notice and no changes to the rule were made in response to this comment. MSW facility owner/operators must be able to make minor changes necessary to day-to-day operations without an unreasonable delay when those changes pose no threat to human health or the environment. The modifications identified in §305.70(j) are intended to allow activities that do not impact the community. The commission does not agree that these activities should require public notice and the rule was not amended in response to these comments.

LF/TCE commented that authorization for the activities identified in §305.70(j)(1), (5), (15), (16), (19), and (27) should be processed as a modification with public notice or as a major amendment.

The commission does not agree that these activities should require public notice and has not revised the rule in response to these comments. When a landfill has an existing authorization to accept more restrictive waste stream(s), such as the acceptance of Type IV material at a Type I landfill, the construction and placement of the Type IV material in a designated cell under §305.70(j)(1) is an operational matter with no potential impact. The Soils and Liner Quality Control Plan (SLQCP) provides construction criteria and testing procedures. Requests for a modification under §305.70(j)(5) would typically relate to revised testing procedures or changes in minor design details. Otherwise, changes such as alternative liner designs require submittal of a major amendment application with an opportunity for contested case hearing, making public notice to add the SLQCP redundant. Processing changes to an existing leachate collection system design under §305.70(j)(15) allows minor changes to design or construction materials. Changes which constitute a new collection system require public notice in accordance with §305.70(k)(8). The installation of a new landfill gas monitoring system not required by the permit as allowed by §305.70(j)(16) is more protective of human health and the environment and beneficial to the community. Modifications submitted under §305.70(j)(19) for a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing plan would include the addition of a plan where one previously was not required, or to minor revisions to previously approved plans such as acceptable sampling procedures or laboratory analytical methods. Public notice would be required for corrective action activities or redesign of the monitoring system that would otherwise result in significant changes to the GWSAP. Changes to the entry gate location that do not alter traffic patterns as allowed in §305.70(j)(27), is clearly restricted by rule to changes which have no effect on the surrounding community and should be allowable without public notice.

Allied, IESI, and TxSWANA commented that §305.70(j)(2) should be amended to clarify applicability to the "maximum" depth of excavation.

The commission does not agree the intent of the rule is to allow any changes in excavation that are within the limit of the maximum depth, and has not amended the rule in response to this comment. The maximum depth of excavation can vary dramatically from one part of the site to another, and allowing any excavation less than the maximum depth is overly broad in its potential impact to site design for this category of modification.

IESI suggested a grammatical correction. LF/TCE commented that changes to a site layout plan in §305.70(j)(6) that add a registered facility should be processed as a modification with public notice or as a major amendment.

The commission appreciates the comment on the grammatical error and has made the correction. Public notice and the opportunity to request a public meeting are part of the application procedures required for activities conducted under an MSW registration. The registration identifies where the activity will be conducted and the application will have been placed on a Web site for public access. The commission does not agree that a requirement for additional opportunity for comment is necessary and the rule has not been amended in response to this comment.

IESI and WMTX noted that §305.70(j)(8) should be amended to remove a typographical error.

The commission appreciates the comment and has corrected the error.

LF/TCE commented that only de minimus changes to internal drainage should be allowed without public notice in §305.70(j)(9). TXSWANA commented that the ability to revise top and side slopes contours should not be deleted if there is not an impact to off-site drainage.

The commission does not agree that only de minimus changes to internal drainage are allowable and has not amended the rule in response to this comment. Changes that affect only internal storm water run-on and run-off have no potential to impact

the public and should not be subject to notice requirements. The reference to top and side slope revisions allowed an undefined degree of change and is deleted to provide consistency with §305.70(k)(7), regarding changes to the final contours. The commission does not agree the activity is appropriate without public notice and has not amended the rule in response to this comment.

IESI suggested an amendment to §305.70(j)(10) to reflect updated terminology. LF/TCE commented that authorization for this activity should be processed as a modification with public notice or as a major amendment.

The commission has amended the rule to update the terminology in response to comment. The commission does not agree that public notice or a major amendment should be required to add details necessary for acceptance for a waste stream that has been authorized through the full permit process. The permit process includes an opportunity to request a contested case hearing on acceptance of the waste stream. This makes a subsequent public notice redundant and the commission has not amended the rule in response to this comment.

IESI commented that §305.70(j)(11) should be amended to allow changes to the legal description, with no change to the waste management area, other than those changes that reduce the size of the facility.

The commission agrees the addition of property to increase the buffer zone should be allowable by a permit modification with public notice and has added a modification to §305.70(k) to identify this activity. The commission has not revised §305.70(j)(11) in response to this comment.

IESI suggested a clarifying change to §305.70(j)(14) to allow non-substantive changes to well depth or design. TxSWANA commented that the rule should be amended to allow the installation of additional wells at depths different than those in the approved monitoring system.

The commission does not agree that the suggested revision relating to non-substantive changes provides further clarification, and has not revised the rule in response to this comment. The commission has not revised §305.70(j)(14), which is to be used to authorize the replacement of damaged or inoperable wells. However, the commission agrees that the installation of additional wells in an existing monitoring system is more protective and in response to this comment has amended §305.70(j)(22) to allow this activity.

WMTX and one individual stated that §305.70(j)(17) should be amended or a new section added to allow changes to the Landfill Gas Management Plan, as is currently provided in the rule for changes to the Groundwater Sampling and Analysis Plan or the Soils and Liner Quality Control Plan. IESI commented that a new modification could be created for this purpose. LF/TCE commented that authorization for this activity should be processed as a modification with public notice or as a major amendment.

Actions processed under §305.70(j)(17) "maintain or improve" the monitoring system design and a site's ability to detect landfill gas migration. The commission does not agree that this should require a waiting period or a major amendment application, and has not revised the rule in response to this comment. The commission also does not agree that creation of a new modification is necessary and has not amended the rule in response to this comment. The large majority of activities which require modification to the Landfill Gas Management Plan currently are processed under existing provisions in §305.70(j) or (k).

One individual stated that §305.70(j)(18) should clarify the timing of the executive director's determination on the necessity for a modification. LF/TCE commented that authorization for this activity should be processed as a modification with public notice or as a major amendment.

The commission does not agree the rule requires clarification regarding the executive director's determination. The rule states that notification is to be made subsequent to changes made per other permits or regulations, and the rule has not been amended in response to this comment. For consistency within the same section, the rule has been amended to repeat reference to other "rules, or regulations" regarding the notification. The commission does not agree it is appropriate to delay changes such as replacement wells for a gas collection system which is necessary to maintain compliance with MSW regulations, by requiring public notice or a major amendment. The gas collection system controls landfill gas migration and is of primary importance for the protection human health and public safety. Public notice is required for the installation of a landfill gas collection system if regulatory levels have been exceeded, in accordance with §305.70(k)(4), and the commission has not amended §305.70(j)(18) in response to this comment.

LF/TCE commented that submittal of a new waste acceptance plan or changes to an existing plan as allowed in §305.70(j)(20) and (21), should be processed as a modification with public notice or as a major amendment.

The waste acceptance plan identifies the procedures to be used by a facility in the acceptance of waste streams already authorized by the permit and does not provide for the addition of new waste streams. The commission does not agree that public notice or a major amendment should be required to add or revise sampling and/or testing criteria for the acceptance of a waste stream that has been authorized through the full permit process. The permit process includes an opportunity to request a contested case hearing on acceptance of the waste stream making a subsequent public notice period redundant, and the commission has not amended the rule in response to these comments.

Allied commented that §305.70(j)(22) should be amended to allow upgrades to the monitoring system if there is no decrease in the depth or number of monitor wells. Allied and TxSWANA commented the rule should allow an increase in the number of wells or the installation of wells at depths greater than those in the approved monitoring system. IESI suggested clarifying change to the rule language and allowance of non-substantive changes to well design. LF/TCE commented that any changes to the existing groundwater monitoring system should be processed as a modification with public notice or as a major amendment.

The commission does not agree that all changes to an existing groundwater monitoring system, such as an upgrade which improves the ability of a facility to detect contamination, should require a major amendment and has not amended the rule in response to this comment. However, the rule has been amended, as discussed below, to require public notice for certain changes to the monitoring system. The commission agrees that the installation of additional wells to the existing monitoring system is more protective and has amended the rule to identify this activity. The commission understands that field conditions sometimes generate a need to revise well depth or screened-interval depth, and these changes should be allowable if consistent with

the groundwater characterization and overall groundwater monitoring system design and if they improve the ability to detect contamination. The commission does not agree that changes in the monitor well design such as screened interval depth should be processed without public notice after a groundwater monitoring system has been certified and approved, and the commission has created a modification under §305.70(k) to allow proposal of this activity. The commission has amended §305.70(j)(22) to clarify that submittal of a major amendment applies to changes to an approved groundwater monitoring system design resulting from changes in groundwater characterization.

IESI, one individual, and WMTX stated that §305.70(j)(23) should be amended to include the plugging of landfill gas monitoring wells for consistency with §305.70(j)(14). LF/TCE commented that any changes to the existing groundwater monitoring system should be processed as a modification with public notice or as a major amendment.

The existing rule language is clear that this modification is for plugging wells in conjunction with other activities that also require executive director review and approval, some of which may require public notice. Consequently, the commission does not agree that plugging wells under this provision should require public notice or a major amendment and has not amended the rule in response to this comment. The commission agrees that the language should be consistent with §305.70(j)(14) regarding applicability to landfill gas or groundwater monitoring wells and has amended the rule in response to these comments.

LF/TCE commented that changes to the closure or post-closure cost estimate in §305.70(j)(25) that result in a decrease in the financial assurance required should be processed as a modification with public notice or as a major amendment.

The regulation in §305.70(j)(25) specifies applicability to only decreases in the cost estimate which result from a decrease in the maximum area requiring closure. This would apply to an area of the landfill that has reached capacity and placed final cover, which is the routine progression in the facility life, or from a portion of the landfill being removed from the permitted area. The commission does not agree that either of these activities should require public notice or a major amendment and has not amended the rule in response to this comment.

New "(j)" modifications

Allied and WMTX commented that the list of modifications that do not require public notice should be amended to identify changes to existing landfill underdrains or dewatering systems that result in equivalent performance, and changes in the design and operations of waste processing and storage facilities that do not increase the authorized loading capacity of the unit. Allied, IESI, and WMTX stated that changes in the perimeter access control system should not require public notice. Allied commented that the modification previously identified under §305.70(j)(10), relating to performance based standards for personnel or equipment, should not be deleted but should be clarified, and with IESI commented that minor changes to the Site Operating Plan or Site Development Plan should be allowed without public notice.

The commission agrees that several of these activities currently are processed without public notice, have no negative impact on the community, and should be identified as allowable changes under §305.70(j), such as changes to existing landfill underdrains or dewatering systems that do not reduce effectiveness of the system, changes in the perimeter access control system that do not reduce system effectiveness in controlling access to the site, and changes to provide performance based requirements for personnel and operating equipment. In response to these comments, the commission has created new modifications listed in §305.70(j) to identify these activities. The commission does not agree that "changes in the design and operations of waste processing and storage facilities that do not increase the authorized loading capacity of the unit" clearly defines the changes that could be made under this provision. The commission agrees that some of the identified activities, such as changes to contaminated water storage units or adding sewer connections have no impact to the community and would be processed by the executive director without a requirement for public notice. However, other activities allowable under the proposed language would be open to interpretation and the commission has not amended the rule in response to this comment.

Modifications which require public notice

NSWMA questioned the need for public notice when activities result in little or no impact to the public and urged the commission to balance costs with the need for public notice. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the modifications changed from no-notice to notice mods generally do not impact the public, do not increase the facility's ability to protect human health and the environment, will increase costs and should not require public notice. TASWA, NTMWD, COA, COCC, COD, and SOSA commented the executive director should make a case-by-case determination on the need for public notice for these activities.

No specific activity was identified by NSWMA as unnecessarily requiring notice and no changes to the rule were made in response to this comment. The commission acknowledges that the rule could result in higher costs when public notice is required, and has attempted to better achieve the balance requested. Two activities, changes to closure or post-closure plans and changes in sequence of landfill development, have been moved from the list of modifications requiring notice to the list of activities authorized under §305.70(j). The commission does not agree that notice should not be required for the remaining activities moved from §305.70(j) to §305.70(k) or that these activities provide no additional protection of human health and the environment. These activities have a higher potential to impact adjacent landowners or the community and providing notice of the activity allows the public to obtain information on waste processing and disposal activities being conducted in their area. The commission does not agree that executive director discretion for public notice should be written into the rule for these activities and has not amended the rule in response to these comments.

Alternative daily cover

LF/TCE commented that the authorization under §305.70(k)(1) for alternative daily cover material use for any length of time should be processed as a major amendment.

The commission does not agree that a major amendment should be required to use an ADC material and has not revised the rule in response to this comment. MSW regulations provide standards for alternative daily cover materials. If compliance with the rule can be demonstrated for the proposed ADC, landfill owner/operators should have the ability to propose a material for ADC use and demonstrate that it is effective and that it poses no endangerment to human health and the environment.

More restrictive waste streams

LF/TCE commented that any changes to incoming waste streams as identified in §305.70(k)(2) should be processed as a major amendment.

The establishment of a more restrictive waste stream results in a landfill operation that has less potential to impact human health and the environment and less impact to the community. The commission does not agree this activity should require a major amendment and has not amended the rule in response to this comment.

Landfill gas remediation systems

LF/TCE stated that the installation of a landfill gas collection system for remediation as identified in §305.70(k)(3) should be processed as a major amendment.

The commission does not agree the installation of a gas collection system necessary to remediate landfill gas concentrations which exceed the regulatory levels and which pose a potential risk to human health and public safety should be delayed by requiring a major amendment. The public notice provided with the permit modification alerts the community that action is being taken to address the presence of the landfill gas and provides an opportunity to obtain additional information. The commission has not revised the rule in response to this comment.

Reduction in sampling frequency

RWS, TASWA, NTMWD, COA, COCC, COD, and SOSA commented that a decrease in sampling frequency does not change the facility's ability to protect human health and the environment and should not require public notice. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the executive director should make a case-by-case determination on the need for public notice for this activity. LF/TCE commented most decreases are not more protective and should be processed as a major amendment.

The commission does not agree that public notice should be discretional or that a major amendment should be required for this activity and has not amended the rule in response to these comments. The groundwater sampling program provides a demonstration that a facility's design and operation is protective of human health and the environment. This is of significant interest to the surrounding community and the commission does not agree that a reduction in sampling should be excluded from public notice and the opportunity it provides to obtain additional information. However, requiring a major amendment in circumstances where the reduced frequency is equally protective of human health and the environment would be disproportionate to the nature of the change that is included in this rule.

Relocation of liquid waste solidification

Allied commented that §305.70(k)(5) should be amended to allow the relocation of other authorized waste treatment units. LF/TCE stated that authorization to add or relocate liquid waste solidification or contaminated soil stabilization should be processed as a major amendment.

The commission agrees that the addition of a new solidification or stabilization area would require a major amendment and authorization for this activity by permit modification was deleted from the proposed rule. Changes under §305.70(k)(5) are for previously-approved treatment units. The commission agrees the public should have an opportunity to comment on potential impact of the relocation, but the commission does not agree that a major amendment is appropriate for this change and has not revised the rule in response to this comment. The reference to other authorized waste treatment areas is overly-broad in its applicability and subject to open interpretation and the commission has not amended the rule in response to this comment.

Closure or post-closure care plans

One individual and IESI commented that §305.70(k)(6) should not require public notice for minor technical changes to the closure and post-closure care plans. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the activity does not represent a significant change in the facility's ability to protect human health and the environment and should not require public notice or should allow the executive director to make a case-by-case determination on the need for public notice for this activity. LF/TCE stated that authorization for the changes should be processed as a major amendment. WMTX commented that significant changes to the closure and post-closure care plans would be accommodated by other modifications identified in §305.70(k) and that other changes to the plans should be allowed without public notice.

The commission agrees that the rule should allow minor technical changes such as updated testing procedures to be made to closure or post-closure care plans without public notice, and that significant changes to the site affecting these plans would be accommodated by other modifications that require public notice in §305.70(k). The commission has amended its rule by adding specificity for relatively minor technical changes and moved this activity to the list of modifications which do not require public notice in §305.70(j)(28). The commission asserts that changes processed under the more narrowly-worded modification should not require public notice or a major amendment.

Changes to final contours

IESI suggested that §305.70(k)(7) be amended to clarify reference to adverse impacts to off-site drainage. LF/TCE commented that authorization for this activity should be processed as a major amendment. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the activity does not represent a significant change in the facility's ability to protect human health and the environment and should not require public notice or should make a case-by-case determination on the need for public notice for this activity. TxSWANA stated that public notice should not be required if there is no impact to off-site drainage, no increase in disposal capacity, and only minor configuration changes.

The commission agrees that changes to final contours should not represent a significant change in the facility's ability to protect human health and the environment, and should not require a major amendment but the commission does not agree that only minor configuration changes will result. Revision of the final contours requires a demonstration that the run-on/run-off has been considered, and that the proposed contours have been accommodated to result in no off-site impact. This demonstration is of interest to the community and particularly surrounding landowners. The commission does not agree that public notice should be on a case-by-case basis or that public notice should not be required, or that the rule should imply a degree of allowable off-site impact, and has not amended the rule in response to these comments.

Revisions to final contours

B&M, TASWA, NTMWD, COA, COCC, COD, SOSA, and WMTX commented that §305.70(k)(8) should provide clarification on applicability of the term "new leachate collection system." LF/TCE

stated that authorization for the installation of a new leachate collection system should be processed as a major amendment. TASWA, NTMWD, COA, COCC, COD, SOSA, and RWS commented that the activity does not represent a significant change in the facility's ability to protect human health and the environment. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the rule should allow the executive director to make a case-by-case determination on the need for public notice or that public notice should not be required.

The commission agrees that §305.70(k)(8) requires clarification and has amended the rule to identify applicability to a leachate collection system not authorized in the existing permit. The commission acknowledges it should not represent a significant change in the facility's ability to protect human health and the environment, therefore the commission does not agree that a major amendment is appropriate and has not amended the rule in response to this comment. However, the commission also does not agree that installation of a new leachate collection system is of the same magnitude as allowable changes in §305.70(j), or that the rule should allow executive discretion for public notice and has not amended the rule in response to these comments.

Post-closure land use

LF/TCE stated that authorization for changes in the post-closure use of a landfill during the post-closure care period as identified in §305.70(k)(9), should be processed as a major amendment.

The regulations referenced in §305.70(k)(9) relate to construction over a closed landfill which requires a development permit. In addition to the public notice required for the permit modification under §305.70(k) and the ability to file a motion to overturn the executive director's decision, the development permit process includes an opportunity for a public meeting. The commission does not agree that in addition to these opportunities for public input, it is appropriate to require processing as a major amendment and has not amended the rule in response to this comment.

Changes in sequence of development

B&M and TxSWANA commented that public notice for all sequence changes is unnecessary and that the executive director should make a case-by-case determination on the need for public notice for this activity. IESI commented that the rule should not require public notice if there are not negative effects to the community. LF/TCE stated that authorization for this activity should be processed as a major amendment. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the rule should not require public notice or should allow for the executive director discretion.

The commission does not agree that a change in the sequence of landfill development should require a major amendment and has not amended the rule in response to this comment. Landfill cell development is a previously established part of the permit and changes processed under this section will not authorize any new waste disposal areas. Sequence changes relate to the timing in which waste placement begins in an area of the site, and the commission agrees that there are instances when a sequence change will have no impact on the community. If upon completion of executive director review it has been determined that no impact to the public will occur, the commission agrees that the activity could be excluded from the requirement for public notice. The commission has amended the rule in response to these comments to allow the executive director to make a case-by-case determination on the need for public notice. Accordingly, the commission has moved the activities proposed under §305.70(k)(10) to the list of modifications which do not require public notice in §305.70(j) with a provision that public notice will be required if the sequence change would potentially affect the community.

Transfers and name changes

Allied commented that §305.70(k)(11) should be amended to remove public notice requirements for name changes or transfers. IESI and WMTX commented that a requirement for public notice for a name change should be removed to provide consistency with §305.64. IESI commented that the rule should be amended to revise instructions for mailing notice. LF/TCE commented that name changes and permit transfers should either allow a comment period prior to being authorized or should be processed as a major amendment.

The commission is not requiring a transfer for corporate name changes and therefore does not agree that requiring a permit modification with public notice for a name change is inconsistent with the procedures in §305.64. Corporate name changes may be the result of an acquisition and will likely require that the facility's financial assurance be provided under a new name. The financial responsibility for an MSW facility is of interest to the community in which it is located and the commission does not agree that the requirement for public notice should be removed. The rule provides for public notice after issuance, which is not overly-burdensome and which is consistent with the processing of permit transfers in the state's industrial and hazardous waste permit program. Similarly, if documentation that complies with Chapters 305 and 330 is provided and corporate status is verified by the Secretary of State, the commission does not agree that delaying a transfer or name change for a comment period is appropriate, or that a permit major amendment is in any way proportionate to the activity. The commission has not amended the rule in response to these comments.

New "(k)" modifications

Allied commented the rule should be amended to allow the following changes as a permit modification when public notice is provided: changes to waste processing and storage facilities that may increase the size of certain features or change the odor control features but do not increase the authorized loading capacity of the unit; changes to the excavation plan or liner or final cover components with no increase in the landfill's maximum permitted elevation, depth or permitted capacity; changes in the final cover or liner systems that provide equivalent environmental protection; and the addition of a new waste stream if existing design and operational procedures are protective of the environment. B&M stated that authorization of alternate final cover systems should be identified in §305.70(k) and that alternate liner systems should not be subject to a contested casing hearing. IESI commented that the list of allowable modifications should include changes to an approved final cover design or to an approved alternative liner design if providing equivalent or enhanced performance. MPI, TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the one-time 10-foot height increase allows a needed flexibility and should not be deleted from the rule.

The commission does not agree that "changes to waste processing and storage facilities that may increase the size of certain features..." adequately defines the type changes that could be made under this provision and would make the rule subject to interpretation and has not revised the rule in response to this

comment. The commission has identified alternative liner designs and the addition of a new waste stream as changes eligible for a major amendment by limited application, therefore the commission does not agree these changes should be processed under §305.70(k). The commission does not agree that a 10-foot height increase should be processed as other than a major permit amendment due to the resulting increase in the height and life of the landfill and has not revised §305.70(k) in response to these comments. The commission agrees that changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity and which do not alter the effectiveness of the groundwater monitoring system, and authorization of alternative final cover systems should be allowable activities under this category, and in response to comment has created new modifications under §305.70(k).

Modifications processed under §305.70(l)

Allied commented that the preamble to the rule should include a discussion on the intent of §305.70 and its use in processing minor permit changes. B&M and TxSWANA commented that minor changes may be interpreted as requiring a limited major amendment application if the activity is not identified in one of the lists of modifications, and together with Allied and NSWMA stated that processing under §305.70(l) should continue.

The commission agrees that a brief discussion on the continued use of §305.70(l) to process changes not specifically identified in §305.70(j) or (k) should be provided. The commission acknowledges that the rule can not attempt to identify all possible changes to a permit or registration that are eligible for processing as modification under §305.70. Proposed changes will continue to be evaluated for compliance with the criteria in §305.70(d) and (e), similarity in scope and impact to changes allowable in §305.70(j) and (k), and compliance with provisions in §305.62. Changes that meet all criteria for a permit or registration modification but which are not specifically identified in §305.70(j) or (k) will be approved under §305.70(l), with or without a requirement for public notice as appropriate.

SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §305.43

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted amendment implements THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The adopted amendment also implements Texas Water Code, §5.103, Rules.

§305.43. Who Applies.

(a) It is the duty of the owner of a facility to submit an application for a permit or a post-closure order. However, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit or a post-closure order, and for all Texas Pollutant Discharge Elimination System permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For industrial solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit or a post-closure order, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit or a post-closure order.

(c) For municipal solid waste applications, it is the duty of the owner of a facility to submit an application for a permit, amendment, or modification. However, if a facility is owned by one person and operated by another, the owner may authorize, in writing, the operator to submit applications for a permit, amendment, or modification. For a new facility, the operator may submit an application for a permit with the written consent of the owner(s) of the land upon which the facility is to be located.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.62, §305.70

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted amendments implement THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The adopted amendments also implement Texas Water Code, §5.103, Rules.

§305.62. Amendment.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes from other states not authorized in the existing license;

(C) authorizes a change in the operator of the facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency; or

(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefore and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

(i) This subsection applies only to major amendments to municipal solid waste (MSW) permits.

(1) A full permit application shall be submitted when applying for a major amendment to an MSW permit for the following changes:

(A) an increase in the maximum permitted elevation of a landfill;

(B) a lateral expansion of an MSW facility other than changes to expand the buffer zone as defined in §330.3 of this title (relating to Definitions). Changes to the facility legal description to increase the buffer zone may be processed as a permit modification requiring public notice under §305.70(k) of this title;

(C) any increase in the volumetric waste capacity at a landfill or the daily maximum limit of waste acceptance for a Type V processing facility; and

(D) upgrading of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258, including facilities which previously have submitted an application to upgrade.

(2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

(A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

(B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and

(C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).

(3) The executive director may request any additional information deemed necessary for the review and processing of the application.

(j) This subsection applies only to temporary authorizations made to existing MSW permits or registrations.

(1) Examples of temporary authorizations include:

(A) the use of an alternate daily cover material on a trial basis to properly evaluate cover effectiveness for odor and vector control;

(B) temporary changes in operating hours to accommodate special community events, or prevent disruption of waste services due to holidays;

(C) temporary changes necessary to address disaster situations; and

(D) temporary changes necessary to prevent the disruption of solid waste management activities.

(2) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed.

(3) The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension.

(4) The executive director may provide verbal authorization for activities related to disasters as described in paragraph (1)(C) of this subsection. When verbal authorization is provided, the permittee or registrant shall document both the details of the temporary changes and the verbal approval, and provide the documentation to the executive director within three days of the request.

(5) Temporary authorizations for municipal solid waste facilities may include actions that would be considered to be either a major or minor change to a permit or registration. Temporary authorizations apply to changes to an MSW facility or its operation that do not reduce the capability of the facility to protect human health and the environment.

§305.70. Municipal Solid Waste Permit and Registration Modifications.

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to

conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. Applications filed before the effective date of this section will be subject to the section as it existed at the time the application was received.

(b) References to the term "permit" in this section include the permit document and all of the attachments thereto as further defined in Chapter 330, Subchapter B of this title (relating to Permit and Registration Application Procedures). References to the term "registration" in this section include the registration document and all of the attachments thereto as further defined in Chapter 330, Subchapter B of this title.

(c) Any increase in the permitted or registered daily maximum limit of waste acceptance for a Type V processing facility shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility. Changes in the annual waste acceptance rate at landfill facilities are subject to the requirements of §330.125(h) of this title (relating to Recordkeeping Requirements).

(d) Permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment.

(e) A permittee or registrant may implement a modification to an MSW permit or registration provided that the permittee or registrant has received prior written authorization for the modification from the executive director. In order to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum, the following information:

(1) a description of the proposed change;

(2) an explanation detailing why the change is necessary;

(3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities);

(4) a reference to the specific provision under which the modification application is being made; and

(5) for those modifications submitted in accordance with subsection (l) of this section that the executive director determines that notice is required and for those listed in subsection (k) of this section, an updated landowners map and an updated landowners list as required under §330.59(c)(3) of this title (relating to Contents of Part I of the Application).

(f) The permittee or registrant must submit one original, two unmarked copies, and one marked (e.g. redline/strikeout) copy of the modification application in accordance with §305.44 of this title (relating to Signatories to Applications). The applicant shall provide one of the two unmarked copies to the appropriate commission regional office. Failure to submit the modification application with complete information may result in the application being returned to the permittee or registrant without further action. Engineering documents must be signed and sealed by the responsible licensed professional engineer as required by §330.57(f) of this title.

(g) The following shall guide the processing of applications for modification of permits and registrations:

(1) For an application for a modification that does not require notice, if at the end of 60 calendar days after receipt of the permit or registration modification application the executive director has not taken one of the following five steps, the application shall be automatically approved:

(A) approve the application, with or without changes, and modify the permit or registration accordingly;

(B) deny the application;

(C) provide a notice-of-deficiency letter requiring additional or clarified information regarding the proposed change;

(D) determine that the application does not qualify as a registration modification, and that the requested change requires a new application for registration; or

(E) determine that the application does not qualify as a permit modification and that the requested change requires an amendment to the permit in accordance with §305.62(c) of this title.

(2) For an application for a modification that requires notice, technical review shall be completed within 60 calendar days of receipt of the permit or registration modification application, unless the review period is extended by the executive director in writing if needed to resolve an outstanding notice of deficiency. Upon completion of the public comment period, the executive director may do one of the following.

(A) If no timely comments are received, the executive director may grant the application on the 28th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk. The application is automatically approved if not acted on by the 28th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

(B) If timely comments are received, the executive director may take one of the steps listed in paragraph (1) of this subsection on or before the 45th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk. The application is automatically approved if not acted on by the 45th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

(h) If an application for a permit or registration modification is denied by the executive director, the permittee or registrant must comply with the original permit or registration conditions.

(i) If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) of this section and the executive director determines that notice is required, the permittee or registrant must prepare and provide Notice of Application and Preliminary Decision after technical review is complete in accordance with §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration). If notice is required, the applicant must file a landowner's list current on the day of filing under subsection (e)(5) of this section and §39.413(1) of this title (relating to Mailed Notice). The notice shall state that a person may provide the commission

with written comments on the application within 23 days after the date the applicant mails notice and shall provide the Web site address where the application has been placed in accordance with §330.57(i) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). Before acting on an application, the executive director shall review and consider any timely written comments. The executive director is not required to file a response to comments. Prior to approval of a modification application, the permittee or registrant must file certification, on a form prescribed by the executive director, that notice was provided as required by §39.106 of this title. The chief clerk shall mail notice of issuance of a modification in accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update). Section 50.133(b) of this title does not apply to modifications which do not require notice under subsection (j) or (l) of this section.

(j) Paragraphs (1) - (32) of this subsection are allowable permit and registration modifications that do not require notice if they meet the criteria in subsection (d) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment):

(1) the establishment of a cell or area that will accept brush and construction demolition waste and rubbish only (also known as a Type IV area) if the cell or area is located within the disposal footprint specified in the site development plan or municipal solid waste landfill (MSWLF) permit;

(2) changes in excavation details for landfills, except for changes that would:

(A) increase the depth or lateral extent of the disposal footprint as described in the site development plan or permit; or

(B) increase the disposal capacity of the landfill facility;

(3) changes to the landfill marker systems (e.g., from a grid based upon geographic coordinates to a grid based upon survey coordinates);

(4) an increase in sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(5) submittal of a new Soils and Liner Quality Control Plan (SLQCP) or changes to an existing SLQCP;

(6) changes to existing landfill underdrain or dewatering systems that maintain or improve effectiveness;

(7) changes to the site layout plan that add or delete a registered or exempted MSW facility/activity (e.g., a used or scrap tire collection area, a compost operation, a recycling collection area, a liquid waste processing facility, a registered transfer station, a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, etc.);

(8) changes in the site layout, other than entry gate location, that relocate the gatehouse, office or maintenance building locations, or that add scales to the facility;

(9) changes in the design details for an authorized solidification basin;

(10) changes in the drainage control plan that alter internal storm water run-on/run-off control without impacting offsite drainage or increasing landfill disposal capacity;

(11) the addition of design and operational requirements in accordance with §330.173 of this title (relating to the Disposal of Industrial Wastes) for the opening of a dedicated cell or area that will accept Class 1 nonhazardous industrial waste, provided that the landfill permit authorizes the acceptance of that waste and that the dedicated cell or area is located within the disposal footprint specified in the site development plan or MSWLF permit;

(12) changes in the sequence of landfill development unless the changes would potentially affect the adjacent property owners or the community in which case notice in accordance with §39.106 of this title would be required;

(13) changes in the perimeter access control system that do not reduce system effectiveness in controlling access to the site;

(14) corrections in the metes and bounds description of the permit or registration boundary that reduce the size of the facility and that do not result in permit or registration acreage beyond the original permit or registration boundary;

(15) a change in the facility records storage area from an onsite to an offsite location;

(16) the addition of a composting refund plan (a plan containing instructions and procedures to ensure collection of the composting refund, as cited in Texas Health and Safety Code, §361.0135) to the site operating plan of an MSWLF;

(17) changes to the Site Development Plan or Site Operating Plan to provide performance-based standards for personnel or equipment, or minor corrections to provide consistency within the permit;

(18) installation of a new monitoring well(s) that replace(s) an existing monitoring well(s) (e.g., landfill gas or groundwater monitoring well(s)) that has been damaged or rendered inoperable, with no change to the design or depth of the well(s), or to the monitoring system design;

(19) changes to an existing leachate collection system design;

(20) installation of a new landfill gas monitoring system not required by permit;

(21) changes to an existing landfill gas monitoring system design that maintain or improve the monitoring system design;

(22) changes to an existing landfill gas collection system design. Changes made for the purpose of complying with other permits, rules, or regulations do not require prior approval under this section before implementation. Notification of changes made to a landfill gas collection system in order to comply with other permits, rules, or regulations shall be sent within 30 days to the executive director and the appropriate commission regional office. Upon receipt of the notification the executive director will determine if submittal of a modification is required;

(23) submittal of a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing GWSAP;

(24) submittal of a new waste acceptance plan or the addition of detailed narrative or design drawings which provide details for the acceptance of waste streams authorized within the permit or registration (e.g., Class 1 nonhazardous industrial waste);

(25) revisions to an existing waste acceptance plan to include waste streams authorized by the permit or registration;

(26) upgrade of an existing landfill groundwater monitoring system with no increase in depth or design, or the installation of monitor wells at a different depth or design in addition to wells in the approved groundwater monitoring system. Changes to the groundwater monitoring system resulting from a change in the groundwater char-

acterization as defined in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action), must be requested as an amendment under §305.62 of this title;

(27) the plugging of monitoring wells (e.g., landfill gas or groundwater monitoring wells) when the executive director has determined that the plugging of monitoring wells is appropriate in various situations including, but not limited to, when a facility has completed the post-closure maintenance period, when an obsolete monitoring system is being replaced with a new monitoring system, or when a damaged monitoring well is being replaced;

(28) changes to closure or post-closure care plans for technical corrections, updated testing procedures, etc.;

(29) substitution of an equivalent financial assurance mechanism;

(30) changes to a closure or post-closure care cost estimate required under §§330.503, 330.505, or 330.507 of this title (relating to Closure Cost Estimates for Landfills; Closure Cost Estimates For Storage and Processing Units; and Post-Closure Care Cost Estimates for Landfills) that result in an increase/decrease in the amount of financial assurance required if the increase/decrease in the cost estimate is due to an increase/decrease in the maximum area requiring closure;

(31) changes in the amount of financial assurance required as the result of corrective action;

(32) changes to the entry gate location that do not alter access traffic patterns delineated in the permit or registration;

(k) Paragraphs (1) - (13) of this subsection are modifications which require notice. For those modifications requiring notice, the permittee or registrant must send notice of the modification application by first-class mail in accordance with §39.106 of this title and to all persons listed in §39.413 of this title:

(1) the use of an alternate daily cover material on a permanent basis in accordance with §330.165(d) of this title (relating to Landfill Cover);

(2) a modification in the operation of a landfill that will change the incoming waste stream to a more restrictive waste stream (i.e., a change from a Type I landfill operation to a Type IV landfill operation). The modification may be granted if the receipt of waste under the present operation ceases once the modification is approved; the filled portion of the landfill will be closed in accordance with Chapter 330, Subchapter K of this title (relating to Closure and Post-Closure); and the modification application details changes to the site development plan and site operating plan as appropriate to reflect the proposed change in operation;

(3) installation of a landfill gas collection system for a landfill gas remediation plan in accordance with §330.371 of this title (relating to Landfill Gas Management);

(4) changes to groundwater monitor well depth or design that are consistent with the groundwater characterization and approved monitoring system design, and that improve the effectiveness of the system in detecting contamination. Changes to the groundwater monitoring system resulting from a change in the groundwater characterization, must be requested as an amendment under §305.62 of this title;

(5) changes to decrease sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(6) changes to a site layout plan that relocate a liquid waste solidification facility or a petroleum-contaminated soil stabilization area;

(7) changes to the facility legal description due to the addition of property for purposes of increasing the buffer zone as defined in §330.3 of this title;

(8) changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity and which do not alter the effectiveness of the groundwater monitoring system;

(9) changes to the approved final contours and approved final slopes with no height or capacity increase over the maximum permitted height or capacity, with no impact to off-site drainage;

(10) changes to include an alternative final cover design in accordance with §330.457(d) of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993);

(11) installation of a new leachate collection system not authorized in the existing permit;

(12) changes to post-closure use of a landfill in accordance with §330.957 of this title (relating to Contents of the Development Permit and Workplan Application) during the post-closure care period;

(13) name changes or transfers of municipal solid waste permits or registrations in accordance with §305.64 of this title (relating to Transfer of Permits) must be processed as permit or registration modification and require public notice after issuance. The mailing procedures of this subsection shall be followed. Mailing procedures shall be completed after the transfer is approved and within 20 days following the approval.

(l) In case of an application for a permit or registration modification for a change not listed in subsection (j) or (k) of this section, the executive director shall make a determination as to whether the change is eligible to be processed as a permit or registration modification and if the change requires public notice in accordance with subsection (i) of this section. In making this determination, the executive director shall consider if the requested change meets the criteria in subsections (d) and (e) of this section. Public notice shall be reserved for modification applications of similar impact as modifications listed in subsection (k) of this section.

(m) The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn the executive director's action on a modification application in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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CHAPTER 330. MUNICIPAL SOLID WASTE
SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §330.57, §330.59

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §330.57 and §330.59. Section 330.59 is adopted *without changes* to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8692) and will not be republished. Section 330.57 is adopted *with changes* to the proposed text and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking adds signage requirements for new municipal solid waste (MSW) permits and major amendments, and increases the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. Both measures are designed to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. The rule previously required identification of property ownership within 500 feet of an MSW facility in the form of a land ownership map and landowner's list in MSW permit or registration applications. When public notice is required for MSW permit or registration actions, the mailing list includes persons identified on the adjacent and potentially affected landowners list and land ownership map described in §330.59. The adopted rule changes the designated distance 500 feet to 1/4 mile for the land ownership map and landowners list distance requirements for public notice. The rulemaking also requires that applicants post signs at the facility stating that a new permit application or a major amendment application for an existing permit has been submitted, and the rule specifies requirements on sign placement and information shown on the signs.

Concurrent with this rulemaking, the commission adopts amendments to 30 TAC Chapter 305, Consolidated Permits, to revise the procedures for requesting certain major amendments to permits and to revise notice requirements for some permit and registration modifications.

SECTION BY SECTION DISCUSSION

The commission adopts amendments to §330.57(i) and §330.59(c)(3) in Subchapter B, Permit and Registration Application Procedures.

Section 330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission adopts amended §330.57(i) to reflect that applicability no longer applies only to internet postings.

The commission adopts amended §330.57(i)(1) to clarify that application placement on the internet is to be concurrent with submittal of the application.

The commission adopts §330.57(i)(3) to require that applicants for new permits or major amendments post signage at the facility within 30 days of the executive director's receipt of the application, and to provide requirements for information to be posted on the sign. The commission determined that potentially affected parties may be outside the area for mailed notice or may not routinely read published notices in the newspaper and could be unaware of a proposed permit action. The new requirement will better ensure that all persons have an opportunity to comment or obtain information regarding MSW activities being proposed in the community. The rule was revised from proposal to: 1) clarify applicability to new permits; 2) replace the term "facility" with "site" to better reference undeveloped locations; 3) add a requirement that the sign advise the public how they can obtain further information on participating in TCEQ permitting matters; 4) remove a requirement that the sign include the TCEQ mailing address; 5) remove a requirement that the sign provide a rule or statutory citation relating to requests for public meetings; and 6) remain in place until the close of the final comment period.

The commission adopts §330.57(i)(4) to provide requirements for sign placement along highways or roads bordering the facility. The commission has determined that a requirement for signage at intervals no greater than 1,500 feet is an effective yet simple method of providing notice. The rule was revised from proposal to accurately reflect applicability to permitted rather than registered facilities.

The commission adopts §330.57(i)(5) to require that signs be posted in an alternative language when existing regulations require that an applicant publish notice in an alternative language.

The commission adopts §330.57(i)(6) to allow applicants to provide public notice in an alternative manner. The rule provides flexibility to the applicant and the executive director in considering other proposals when the method prescribed in rule is not practical for circumstances or conditions at the facility.

Section 330.59, Contents of Part I of the Application

The commission adopts amended §330.59(c)(3)(A) to require that permit and registration applications contain a map showing property ownership within 1/4 mile of the facility and mineral interest ownership under the facility.

The commission adopts amended §330.59(c)(3)(B) to require that permit and registration applications contain a list with the name and mailing address of property owners within 1/4 mile of the facility and mineral interest ownership under the facility.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission invited public comment regarding the REGULATORY IMPACT ANALYSIS DETERMINATION during the public comment period. No comments were received. The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225, because the rules do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rules is to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. This will be done by adding signage requirements for new MSW permits and major amendments, and by increasing the distance that mailed notice is provided for certain actions relating to MSW permits and registrations. It is not anticipated that the adopted rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the adopted rules do not meet the definition of major environmental rule.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these requirements. First, there are no applicable federal standards for signage for new MSW permits or registrations. Second, the rules do not exceed an express requirement of state law in Texas Health and Safety Code (THSC), §§361.0641, 361.0665, and 361.079. Third, there is no delegation agreement that would be exceeded by the adopted rules. Fourth, the commission adopts these rules under the specific authority of THSC, §361.079. This rulemaking is also adopted under the authority of THSC, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed. The adopted rules will substantially advance this stated purpose by adding signage requirements for new MSW permits and major amendments, and by increasing the distance that mailed notice is provided for certain actions relating to MSW permits and registrations.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property. In particular, there are no burdens imposed on private real property. In addition, the adopted rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

PUBLIC COMMENT

The commission held a public hearing in Austin on January 8, 2008. The comment period closed on January 15, 2008, and subsequently was extended to February 22, 2008, in response to requests from State Representative Richard Hardcastle and State Representative Larry Phillips.

Comments were received from McGinnis, Lochridge & Kilgore, L.L.P on behalf of Allied Waste Industries (Allied), Biggs & Mathews Environmental (B&M), Harris County Public Health & Environmental Services (HCPHES), Hutto Citizens Group (HCG), IESI TX Corporation (IESI), Indian Creek Homeowners Association of Carrollton (ICHA), Lowerre, Frederick, Perales and Allmon (LFPA), Malcolm Pirnie, Inc., San Antonio Office (MPI), National Solid Wastes Management Association (NSWMA), TCEQ Office of Public Interest Council (OPIC), Republic Waste Services of Texas, Ltd. (RWS), Russell & Rodriquez on behalf of Texoma Area Solid Waste Authority (TASWA), North Texas Municipal Water District (NTMWD), City of Arlington (COA), City of Corpus Christi (COCC), City of Dumas (COD), and City of San Angelo (SOSA), Lowerre & Frederick Attorneys at Law and Texas Campaign for the Environment (LF/TCE), Texas Disposal Systems (TDS), Texas Landfill Management (TLM), Lone Star Chapter of the Solid Waste Association of North America (TxSWANA), Waste Management of Texas, Inc. (WMTX), and seven individuals. Many commenters supported the rulemaking, however with suggested changes. Specific comments are addressed below.

RESPONSE TO COMMENTS

Term limits

IESI suggested a typographic change to the section on Statutory Authority for Subchapter B. Five individuals stated that MSW permits should have term limits to allow an opportunity for regular public review.

The commission appreciates the comment but could not identify the typographic error and did not make the change. The commission does not agree that a proposal for term limits is within the scope of this rulemaking and the rule was not amended in response to this comment.

Signage for new permits and major amendments

Allied, IESI, and TxSWANA commented that the rule should reference "new" permits. Allied, IESI, NSWMA, RWS, TxSWANA, and WMTX commented that the section should be amended to explicitly state that the sign is for "informational purposes only" so as not to create new jurisdictional challenges. Allied and WMTX stated that the rule should be amended to state that signs must "substantially meet" the requirements set forth in subparagraphs (A) - (H), consistent with other commission rules. Allied also suggested that the term "facility" be revised to "site."

The commission agrees that the rule should reference "new" permits and that the purpose of the signage requirement is to provide information to the public in an effective manner, and the intent not to create additional legal issues. The commission also

agrees that "site" is more appropriate to the future location of a landfill and has amended §330.57(i)(3) in response to these comments. The commission has amended the rule to reduce the required information as discussed below and therefore does not agree it is necessary to make provision for "substantial compliance" with the signage requirements and has not amended the rule in response to this comment.

Allied and OPIC stated that subparagraph (H) should be deleted and that language should be provided in subparagraph (C) advising the public of the ability to comment or request a public meeting. HCPHES and LF/TCE stated that the signage requirements should include the internet address for viewing the application. LF/TCE commented that the sign should also include rule citations for the ability to request a contested case hearing, or a web address in lieu of rule or statutory citations to provide a link to applicable statutes, rules, and other related information. OPIC commented that the Central Office address in subparagraph (D) should include the Office of the Chief Clerk (OCC) mail code number. TASWA, NTMWD, COA, COCC, COD, SOSA, and RWS commented that the information required should be simplified. TASWA, NTMWD, COA, COCC, COD, and SOSA stated that the prescribed 4-foot by 4-foot sign is inadequate for the required information and that an accurate sign size should be prescribed. WMTX noted a typographical error in §330.57(i)(3)(H).

The commission agrees that the suggested internet addresses, rule citations, and the OCC mail code would be useful information but also agrees an excessive amount of information was required in the proposed rule and has not added this information in response to comment. The commission has amended subparagraph (C) to advise the public on how they can obtain information on participating in TCEQ permitting matters, has reduced the information required by subparagraph (D), and has deleted §330.57(i)(3)(H) in response to comments. The reduced information should allow the 4-foot by 4-foot sign to be adequate and no change was made to the sign size in response to comment.

Allied commented that the rule should be amended to clarify that signs are to remain in place until a final decision by the commission. WMTX commented that §330.57(i)(3)(G) should be amended to clarify that signs are to remain in place until 30 days after the last publication of the Notice of Application and Preliminary Decision. WMTX stated that an owner/operator should not be penalized if reasonable efforts are taken to maintain the signs in a readable condition as required in subparagraph (G). One individual stated that the rule should accommodate potential damage to the sign when signage is required for lengthy periods, or limit the time required for signage.

The commission agrees that signs should remain in place until the close of the final comment period and has revised §330.57(i)(3)(G) in response to this comment. The commission acknowledges that signs may be required to remain in place for long periods and agrees that an owner/operator should not be penalized if reasonable efforts are taken to maintain the signs. The commission has reduced the information required on the signs to provide for compliance through a reasonable level of care and maintenance. The commission does not agree that other accommodation or time limits should be included in the rule and has not amended the rule in response to this comment.

Sign spacing

Allied and RWS stated that §330.57(i)(4) should be revised to require a single sign only at the facility's main entrance. TASWA, NTMWD, COA, COCC, COD, and SOSA commented the 1,500-foot spacing is excessive, penalizes sites with large buffers, and one sign along each road is adequate. HCPHES stated that the reference to "registered facility" should be revised to reference facilities that are permitted. TxSWANA commented that signage in an alternative language could result in an excessive number of signs and suggested that only every other sign posted must be in the alternative language.

The commission appreciates the comment regarding the reference to registered facilities and has amended the rule to refer to permitted facilities. The commission does not agree that providing the public with a single sign at the site entrance or along each road is adequate to effectively convey the information as intended. The rule provides for a maximum of three signs along each road which is consistent with TCEQ Air Permits program requirements and given the reduced amount of information being required on each sign, the commission does not agree this is unreasonable even when signage in an alternative language is required. The commission has not amended the rule in response to these comments.

Signage Variance

TxSWANA stated that 30-day posting requirement should be amended to accommodate the time necessary for the executive director to consider and authorize a variance request as allowed in §330.57(i)(6).

The commission does not agree that an additional time period is necessary and has not amended the rule in response to this comment. The 30-day period begins once an application has been submitted, which coincides with the administrative review of the application. The administrative review does not include consideration of variances for signage. An application for a new permit or a major amendment requires an extensive period of preparation and includes coordination with other agencies prior to submitting the application. If a variance from the signage requirement is to be requested, coordination with the TCEQ executive director on the variance should be accomplished during this period.

1/4 mile public notice requirement

Allied, IESI, NSWMA, and TxSWANA stated the 1/4-mile notice requirement resulting from changes to §330.59(c)(3) is overly burdensome for minor changes to a facility and that the 500-foot notice should be retained for modifications which require public notice. Allied also commented that if the 1/4-mile notice is retained, the rule should allow for "substantial compliance" with the requirements. B&M stated that expanding notice to 1/4 mile will result in greater confusion for the regulated community and the public, will be more expensive and time consuming. Five individuals stated that the proposed expansion to 1/4 mile for public notice is inadequate. ICHA, OPIC, and LF/TCE stated that the landowner's map and list and the accompanying notice should be expanded from 1/4 mile to include landowners within one mile of the facility. LF/TCE noted that persons could be affected beyond one mile from the facility and that distance for notice could be made dependent on the size, height, and type of facility. LFPA commented the landowners list and map should include all real property owners with 1/2 mile of the permit boundary for a new permit or amendment for a Type I landfill and that other changes requiring notice should be provided to property owners within 500 feet of the facility boundary or to landowners up to 1/2 mile if determined appropriate by the ED upon initial review of the application. TASWA, NTMWD, COA, COCC, COD, and SOSA commented the SECTION BY SECTION discussion incorrectly

states the landowners map should include the mineral interest ownership within 1/4 mile of the facility. RWS commented that the proposed expansion of notice requirements from 500 feet to 1/4 mile will be unnecessarily burdensome for both permittees and the TCEQ when facilities are located in urban or suburban areas, that parties most concerned are adjacent property owners, and that a 500-foot public notice requirement should be retained. TxSWANA proposed that the notice requirement for smaller facilities such as transfer stations be limited to 750 feet, and suggested rule language to allow "substantial compliance" with requirements relating to identification of landowner and mineral interest ownership. WMTX commented that in heavily populated areas notification requirements will be unreasonably burdensome and the rule should be amended to retain the 500-foot notice requirement when facilities are located in counties whose population is greater than three million people.

The commission acknowledges that the rule is a significant change in the notice requirement and that extending public notice from 500 to 1,320 feet will result in a more burdensome requirement in heavily populated areas. However, the commission does not agree that the 1/4 mile mailed notice is excessive. The commission prefers to adopt a uniform standard for providing notice and does not agree that notice should be based on the population, type of authorization, the facility size and height, or the executive director's determination upon application review. The commission appreciates the comment regarding the SECTION BY SECTION discussion regarding mineral interest ownership and has revised the discussion to reflect the rule. The expanded notice must represent a balance of interests and consequently the commission does not agree that the notice should be greater than 1/4 mile. The 1/4-mile notice requirement will greatly increase the likelihood that potentially affected parties will be informed that a new MSW facility or a change to an existing MSW facility is being proposed, and the community is entitled to be made aware of any potential impact resulting from changes in MSW activities. The commission acknowledges consideration will be given for "substantial compliance" with public notice requirements, but the commission does not agree it is appropriate to place this term in the rule. The commission has not amended the rule in response to these comments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted amendments implement THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The adopted amendments also implement TWC, §5.103, Rules.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit) and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Geoscientist's Seals).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Applications shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.

(h) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(i) Posting application information.

(1) Upon submittal of an application, the owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet Web site, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its Web site the identity of all owners and operators filing such applications and the Web address link required by this subsection.

(3) For applications for new permits or major amendments, an owner or operator shall post notice signs at the site within 30 days of the executive director's receipt of an application. This sign posting is for informational purposes only. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) identify as appropriate that the application is for a proposed permitted facility or an amendment to a permitted facility;

(C) include the words "For further information on how the public may participate in Texas Commission on Environmental

Quality (TCEQ) permitting matters, contact TCEQ" at the toll free telephone number for the Office of Public Assistance, and the agency's Web site address;

(D) include the name and address of the owner or operator;

(E) include the telephone number of the owner or operator; and

(F) remain in place and legible until the close of the final comment period.

(4) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line parallel to a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(5) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(6) The executive director may approve variances from the requirements of paragraphs (3), (4), and (5) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802432
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 29, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER D. EDUCATION

31 TAC §51.80

The Texas Parks and Wildlife Commission adopts an amendment to §51.80, concerning Hunter Education Course and Instructors, without changes to the proposed text as published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1488).

The amendment reduces the minimum age requirement for hunter-education certification from 12 years of age to 9 years of age. The current standard has been in effect since 1988. By statute (Parks and Wildlife Code, §62.014), the minimum age for certification may be set by the Texas Parks and Wildlife Commission.

The minimum age is being lowered to be consistent with the minimum age standards of the department's youth hunting program and similar laws in other states. The department's youth hunting program allows youngsters nine years of age and older to hunt on private lands if they attend and pass a hunter education course. States such as Colorado (no minimum age) and New Mexico (minimum age of 10) require Texans who purchase their state's hunting license to show proof of certification to legally obtain the license.

The amendment will function by reducing the minimum age requirement for hunter-education certification from 12 years of age to 9 years of age.

The department received 53 comments opposing adoption of the proposed rules. Of those comments, 20 commenters expressed a specific rationale or reasoning for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

Eight commenters opposed adoption and stated that nine years of age is too young to understand the concepts of hunter education. The department disagrees with the comment and responds that other states have similar age requirements and that empirical evidence indicates that nine-year-olds are capable of retaining the training received in a hunter education course. To obtain certification, a person must achieve a minimum score on a department-administered examination and be evaluated by the instructor as acceptable in attitude, knowledge, and skill. As a result, persons who are unable to meet these standards will not receive a hunter education certification, regardless of age. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that most nine-year-old children are not capable of the kind of judgment and awareness necessary for the unsupervised use of hunting weapons. The department disagrees with the comment and responds that an important element of parental supervision of hunting activities is the decision to allow a young person of any age to hunt by themselves. The department believes that parents should exercise good judgment in allowing children to hunt by themselves. Also, as noted above, to obtain hunter education certification, a person must demonstrate a prescribed level of understanding. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that hunters between the ages of 9 and 12 should be required to be accompanied by a licensed hunter 17 years old or older when hunting. The department disagrees with the comment and responds that the department is required by statute (Parks and Wildlife Code, §62.014) to establish a minimum age for participation in hunter education and to issue a hunter education certificate to any person who completes the hunter education course. The statute further provides that anyone who has not completed a hunter education course must be accompanied by a licensed hunter aged 17 or older. The department therefore cannot require a person who has successfully completed a hunter education course to

be accompanied by another hunter. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the minimum age for hunter education in other states has absolutely no bearing on Texas regulations. The department disagrees with the comment and responds that Texans who hunt in other states must comply with the requirements of those states, and that the experience of other states is useful in determining what is appropriate in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that special courses should be provided for young persons taking hunter education. The department disagrees with the comment and responds that the department trains instructors to accommodate various learning styles and uses hands-on teaching methods effective for both youngsters and adults. The department also intends the hunter education course be a single standard that must be met by all hunters, regardless of age. No changes were made as a result of the comment.

One commenter opposed adoption and stated that children under the age of 12 should not be required to take the hunter education course. The department agrees with the comment and responds that the rule allows but does not require children under the age of 12 to take the hunter education course. However, a person under the age of 12 will be required to have obtained hunter education certification if he or she wishes to hunt without the supervision of a person 17 year of age or older. No changes were made as a result of the comment.

One commenter opposed adoption and stated that mandatory hunter education should be eliminated. The department disagrees with the comment and responds that there is a demonstrable positive correlation between mandatory hunter education and the decreased frequency of hunting accidents and increased compliance with hunting regulations. No changes were made as a result of the comment.

The department received 307 comments supporting adoption of the proposed amendment.

No groups or associations commented on the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the hunter education program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2008.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.112, §57.113

The Texas Parks and Wildlife Commission adopts amendments to §57.112 and §57.113, concerning Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants, without changes to the proposed text as published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1492).

The amendment to §57.112, concerning General Rules, prohibits the removal of live grass carp from public waters where grass carp have been placed under a permit issued by the department. The department issues permits authorizing the purchase and release of grass carp to control aquatic vegetation in public waters. The removal of grass carp from waters where they have been released frustrates the biological goal of controlling aquatic vegetation and reduces the cost effectiveness of that control effort. The amendment is necessary to make grass carp introductions as effective as possible.

The amendment to §57.113, concerning Exceptions, prohibits the release into public waters, importation, sale, purchase, transport, propagation, and possession of black carp (Mylopharyngodon piceus), silver carp (Hypopthalmichthys molitrix), and all species of crayfish within the family Parastacidae.

The U.S. Fish and Wildlife Service has added the black carp and the silver carp to the federal list of injurious fish, which prohibits live fish, gametes, viable eggs, and hybrids of listed species from being imported into or transported between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico or any territory or possession of the United States. The silver carp was added to the list on July 10, 2007 and the black carp was added to the list on October 18, 2007. Although the federal listing does not affect any state's authority to permit possession of black carp or silver carp, by prohibiting importation and interstate transport it effectively makes commercial production of those species moot. The department is aware of no person in the state cultivating or selling black or silver carp under an exotic species permit. The amendment makes Texas regulations consistent with federal regulations.

Prior to this rulemaking the possession, importation, sale, purchase, transport, propagation, and release into public waters of all species of southern hemisphere crayfish with the exception of the family Parastacidae was prohibited. Crayfish in the family Parastacidae could be possessed, propagated, transported, and sold under an exotic species permit, but live Parastacidae could be possessed by non-permitted persons only at a restaurant or other food service establishment for purposes of on-premises consumption as food or while being transported to an out-of-state destination.

The department recently conducted a risk analysis of escapement, establishment, and environmental impacts of Australian red claw crayfish (Cherax quadricarinatus). The risk analysis concluded that there is a high potential of escapement from both open and closed systems and a high probability of survival and population establishment in natural systems in Texas. Closed systems are tank or pond systems that do not allow free ingress or egress. Open systems are ponds that allow organisms to enter or leave as they wish. The department finds that the potential detrimental effects on native Texas crayfishes and other aquatic

organisms provide ample justification for the prohibition of the possession of live red claw crayfish in the state.

The impact of a specific exotic species on a given native ecosystem is difficult to predict, but in general terms, the threat potential can be characterized by 1) evidence that the species is invasive elsewhere; 2) potential suitable range; 3) reproductive potential; 4) habitat quality; 5) the presence/absence of similar species; 6) the prey/predator relationship within the prospective habitat; and 7) food abundance. In addition, other factors such as dispersal dynamics (the movement of organisms as they distribute themselves between habitats) can affect the efficiency with which an invasive exotic species can become established. Once established, invasive exotic species are extremely difficult if not impossible to eliminate.

The Australian red claw crayfish (Cherax quadricarinatus) is native to remote areas of tropical northern Australia. Escapement of other nonindigenous crayfishes into natural systems in the U.S. has resulted in the elimination of native crayfishes from lakes and streams, the loss of habitats and forage important for native fish production and recruitment, and reduced abundance of native amphibians (Lodge et al. 2000). These negative impacts, coupled with the observation that most North American crayfishes occur within small ranges throughout the southeastern United States, suggest a potential cause for concern regarding the vulnerability of native aquatic communities to nonindigenous crayfishes in Texas.

Escapements from aquaculture facilities, as well as both intentional and unintentional releases by aquarium and pond enthusiasts, have been responsible for the establishment of many nonindigenous fishes in the United States. Aquaculture has been identified as the fourth most important vector in crayfish introductions in North America (Lodge et al. 2000), and an estimated 65% of escape events have resulted in the establishment of exotic populations (Beveridge, no date). Escapement of the red claw crayfish from aquaculture environments has been documented in Africa, Puerto Rico, and Venezuela (Williams et al. 2001; de Moor 2002). Adults have exhibited the ability to climb air supply lines, whereas juveniles climb the sides of tanks or become drawn into filter and drainage systems and subsequently released (Masser and Rouse 1997). Red claw crayfish also exhibit the ability to escape natural or man-made pond environments over land (J. Furse, Griffith University). These results indicate a high escapement potential of red claw crayfish in both open and closed systems.

Red claw crayfish are habitat generalists, exhibiting broad dietary requirements and the ability to survive a broad range of environmental conditions (Masser and Rouse 1997; Kats and Ferrer 2003). Optimal growth and survival occurs at water temperatures above 21°C (70°F); however, individuals can survive at water temperatures as low as 7 to 10°C (46 to 50°F; Masser and Rouse 1997), with reproduction occurring at temperatures greater than 15°C (59°F; J. Furse, Griffith). Red claw crayfish can also persist at relatively low dissolved oxygen concentrations (< 1 ppm; Masser and Rouse 1997), and high levels of salinity (e.g., up to 1.75%). Mean annual water temperatures in many regions of Texas are within the thermal tolerances of the red claw crayfish, suggesting that these regions, as well as thermally influenced areas (e.g., springs, municipal warmwater discharges, etc.) may facilitate the survival of red claw crayfish in natural environments. In addition, red claw crayfish have the ability to burrow into substrates (Masser and Rouse 1997) which may provide thermal insulation and allow individuals to persist at sublethal temperatures.

The reproductive characteristics of the red claw crayfish suggest the potential for rapid population growth in a suitable environment. Individuals reach reproductive maturity at 6 to 12 months of age and have the ability to produce multiple broods each year with high reproduction rates (i.e., up to 1,000 eggs per female per spawn; Masser and Rouse 1997). In contrast, most native North American crayfishes spawn once per year during fall and females bear eggs during spring (Helfrich and DiStefano 2003). The growth of juvenile red claw crayfish is rapid, and aggressive behavior and cannibalism are known to occur at this lifestage (Masser and Rouse 1997). It is unknown whether these behaviors exhibited towards other red claw crayfish would be extended to other species under competition in a natural environment.

Little information exists regarding competition between red claw crayfish and native North American species. Masser and Rouse (1997) reported that red claw crayfish did not negatively affect native red swamp crayfish during interaction experiments in an Alabama culture environment. However, red claw crayfish are known to dominate local Australian crayfish and prawn species (Cook et al., no date) and out-compete native shrimp species in Puerto Rico (Williams et al. 2001). Studies of the impacts of other exotic crayfishes on native species indicate highly detrimental effects, including reductions in distribution or extirpation (Reigel 1959; Bouchard 1977; Lodge et al. 1986; Olsen et al. 1991; Jezerinac et al. 1995; Light et al. 1995; Taylor and Redmer 1996; Lodge et al 2000b). Competitive advantages of the exotic species were found to be related to a number of interacting mechanisms, including food consumption rates (Olsen et al. 1991; Willman et al. 1994), individual growth rates and potential (Hill et al. 1993), competition for shelter and food (Hill and Lodge 1994), differential susceptibility to fish predation (DiDonato and Lodge 1993; Garvey et al. 1994), and genetically confirmed hybridization (Perry et al. unpublished data; Lodge et al. 2000b). The relatively large body size, rapid growth rate, and reproductive potential of the red claw crayfish suggest that these characteristics may provide similar competitive advantages over native Texas species.

Approximately 350 species (75% of the world's total) of crayfish inhabit the United States. Many of these are among the most threatened of all terrestrial and aquatic species (Lodge et al. 2000a; Lodge et al. 2000b). In addition, the majority of these crayfishes occur within small geographic ranges in the Southeastern U.S., rendering them highly susceptible to environmental change (Lodge et al. 2000b). A total of 35 species of crayfish are native to Texas, 13 of which are endemic and distributed over a relatively small geographic scales (e.g., drainage basins, counties, etc.). In 1996, the American Fisheries Society listed four Texas species as of special concern, one as threatened, and an additional six as endangered (Table 1). The status of these species, coupled with the limited geographic distribution of many Texas crayfishes, suggests that conserving these populations and their respective environments are future challenges faced by the department. In addition, other state and federally listed aquatic organisms, such as the San Marcos salamander Eurycea nana, the Comal Springs riffle beetle Heterelmis comalensis, the Comal Springs Dryopid beetle, Stygoparnus comalensis, and the fountain darter Etheostoma fonticola, could be negatively affected due to predation, alterations in habitat, food web dynamics, and competition from invasive exotic species. Although little is known about the direct impacts of the red claw crayfish on native aquatic communities in the U.S., information

from other countries, case histories of other invasive crayfishes in the U.S., and the population status of many aquatic species in Texas suggest that detrimental effects on natural systems in the state are probable.

Although Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the rules, the department nonetheless has determined that the rule as adopted will result in the best combination of effectiveness in obtaining the desired results and of economic costs not materially greater than the costs of any alternative regulatory method considered. The department finds that there are no small or microbusinesses or other businesses in the state that are engaged in the lawful sale of black carp, silver carp, or crayfish within the family Parastacidae. Therefore, no businesses, including small or microbusinesses, are affected by the rules as adopted. The rules as adopted are the most effective method of obtaining the desired results and since no business entity is in lawful possession of black carp, silver carp, or crayfish within the family Parastacidae, the economic cost to businesses is not materially greater than the costs of any alternative regulatory method considered.

The amendment to §57.112 will function by prohibiting the removal of live grass carp from public waters where grass carp have been placed under a permit issued by the department.

The amendment to §57.113 will function by prohibiting the release into public waters, importation, sale, purchase, transport, propagation, and possession of black carp (Mylopharyngodon piceus), silver carp (Hypopthalmichthys molitrix), and all species of crayfish within the family Parastacidae.

The department received one comment opposing adoption of the proposed rules. The commenter did not offer a specific rationale or reason for opposing adoption. No changes were made as a result of the comment.

The department received 18 comments supporting adoption of the proposed rules.

No groups or associations commented on the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §66.007, which authorizes the commission to regulate the importation, possession, sale, and placing into the water of this state harmful or potentially harmful exotic fish, shellfish and aquatic plants, and under Agriculture Code, §134.020, which authorizes the commission to regulate the importation, propagation, and sale of harmful or potentially harmful exotic species by an aquaculturist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2008.

TRD-200802378
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 26, 2008
Proposal publication date: February 22, 2008
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER C. ADVISORY COMMITTEES

34 TAC §1.300, §1.301

The Comptroller of Public Accounts adopts the repeal of §1.300, concerning Public Education Integrity Task Force, and §1.301, concerning the "e-Texas" Citizens' Commission, without changes to the proposal as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2668).

The repeal is necessary because both of these advisory committees have been abolished. Pursuant to §1.300(c), Duration, the Public Education Integrity Task Force was abolished on December 31, 2000. Pursuant to §1.301(c), Duration, the "e-Texas" Citizens' Commission was abolished on June 30, 2001. The repeal is a result of a rules review conducted by the comptroller of Texas Administrative Code, Title 34, Part 1, Chapter 1, Subchapter C. The rules review was performed under Government Code, §2001.039, and concluded that the reasons for initially adopting the rules no longer exist.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, §§403.011, 2110.005, 2110.008 and 2001.039. Section 403.011 outlines the general powers of the comptroller, including without limitation, the authority to adopt regulations the comptroller considers essential to the speedy and proper assessment and collection of state revenues and the authority to suggest plans for the improvement and management of the general revenue. Section 2110.005 and §2110.008 require a state agency to adopt rules regarding the purposes, duties, and duration of advisory committees. Section 2001.039 authorizes a state agency to repeal rules that are no longer necessary as a result of a rule review performed under that section.

These repeal implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2008.

TRD-200802436
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: May 29, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 475-0387

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CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.291

The Comptroller of Public Accounts adopts an amendment to §3.291, concerning contractors, to implement House Bill 3319, 80th Legislature, 2007, with changes to the proposed text as

published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9573). The adopted rule includes a minor change to the fifth sentence under subsection (b)(3)(E). In that sentence, the word "paragraph" was changed to "subparagraph" to reflect the correct structural reference to the subdivision. In addition, a sentence was added to that subparagraph to allow ready mix concrete contractors to issue a resale certificate in lieu of paying sales tax on taxable items incorporated into the concrete.

House Bill 3319 requires that contractors who both manufacture concrete for construction purposes and incorporate that concrete into realty (i.e., a ready mix concrete contractor) must separately state the price of the concrete from any other charges associated with the contract. The ready mix concrete contractor is also required to collect and remit the tax due on the higher of the invoice price or fair market value. These amendments are reflected in new subsections (a)(10) and (b)(3)(E). Subsection (b)(10) is amended to more clearly explain local tax reporting requirements for contractors who improve real property of nonexempt customers. Other nonsubstantive changes are made for clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.056(g).

§3.291. Contractors.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agreed contract price of materials incorporated into the realty--The price specified in the contract for the incorporated materials, i.e., tangible personal property that becomes a part of the real property, plus any additional charges directly attributable to the incorporated materials. For example, profit that is calculated as a percentage of the cost of materials, cost of transportation of the materials, and markup or handling charges that relate directly to the materials charge are included in the agreed contract price. A charge that is calculated as a percentage of the total contract cost is not considered a part of the agreed contract price of materials incorporated into realty. The agreed contract price of incorporated materials cannot be less than the price that the contractor paid for the materials.

(2) Consumable item--Nondurable tangible personal property that is used to improve realty and, after being used once for its intended purpose, is completely used up or destroyed. Examples of consumable items are nonreusable concrete forms, nonreusable drop cloths, barricade tape, natural gas, and electricity. The term "consumable item" does not include machinery, equipment, accessories to machinery or equipment, repair or replacement parts for machinery or equipment, or any rented or leased item.

(3) Contractor--Any person who builds new improvements to residential or nonresidential real property, completes any part of an uncompleted new structure that is an improvement to residential or nonresidential real property, makes improvements to real property as part of periodic and scheduled maintenance of nonresidential real property, or repairs, restores, maintains, or remodels residential real property, and who, in making the improvement, incorporates tangible personal property into the real property that is improved. The term includes subcontractors but does not include material men, suppliers, or persons who provide taxable real property services. Persons who provide real property services should refer to §3.356 of this title (relating to Real Property Service). Persons who repair, restore, or remodel nonresidential real property are providing taxable services and should refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). Persons who repair, restore, or remodel chemical plants or petrochemical refineries should refer to §3.362 of this title (relating to Labor Relating to Increasing Capacity in a Production Unit in a Petrochemical Refinery or Chemical Plant).

(4) Equipment--Tangible personal property that a contractor uses that is not a consumable item or an incorporated material. Examples include tools, machinery, implements, and accessories and repair or replacement parts for the equipment.

(5) Exempt contract--A contract for the improvement of real property with an entity that is exempted under Tax Code, §151.309 or §151.310. An example of an exempt contract is a contract with a nonexempt entity to improve real property for the primary use and benefit of an organization exempted under Tax Code, §151.309 or §151.310, provided that the improvements relate to the exempt purpose of an organization that is exempted under Tax Code, §151.310(a)(1) or (a)(2). Another example is a contract for development work covered under subsection (d) of this section. See §3.322 of this title (relating to Exempt Organizations).

(6) Improvements to realty--See §3.347 of this title (relating to Improvements to Realty).

(7) Incorporated materials--Tangible personal property that becomes a part of any building or other structure, project, development, or other permanent improvement on or to such real property including tangible personal property that, after installation, becomes real property by virtue of being embedded in or permanently affixed to the land or structure constituting realty and which property after installation is necessary to the intended usefulness of the building or other structure.

(8) Lump-sum contract--A contract in which the agreed contract price is one lump-sum amount and in which the charges for incorporated materials are not separate from any charges for skill and labor, including fabrication, installation, and other labor that the contractor performs. For example, guaranteed-maximum contracts are considered lump-sum contracts when the charges for incorporated materials and the charges for skill and all labor are not separately stated. Contracts to improve realty that do not break out all charges for labor, including fabrication labor, are considered lump-sum contracts. For example, a contractor who fabricates and incorporates cabinets into realty under a contract that includes the fabrication labor in the agreed contract price of materials is a lump-sum contractor. Contracts to improve realty that have a zero charge for materials or for labor are considered lump-sum contracts. Separated invoices issued to the customer will not change a lump-sum contract into a separated contract unless the terms of the contract require separated invoices.

(9) New construction--All new improvements to real property, including initial finish-out work to the interior or exterior of the improvement. An example is a multiple story building that has had only its first floor finished and occupied. The initial finish-out of each additional floor before initial occupancy or use is new construction. New construction also includes the addition of new usable square footage to an existing building. Examples include the addition of a new wing onto an existing building. Reallocation of existing square footage inside a building is remodeling and does not constitute the addition of new square footage. For example, the removal or relocation of interior walls to expand the size of a room or the finish out of an office space

that was previously used for storage is remodeling. Raising the ceiling of a room or the roof of a building is not new construction if new usable square footage is not created.

(10) Ready mix concrete contractor--A contractor who manufactures or produces concrete for construction purposes and incorporates the concrete into the property improved.

(11) Sale and installation of tangible personal property--Includes a contract to furnish and install machinery, equipment, or other tangible property that is not essential to the building or structure, nor adapted or intended to become a part of the realty, but which incidentally may, on account of its nature, be temporarily attached to the realty without loss of its identity as a particular piece of machinery, equipment, or property and, if attached, is readily removable without substantial damage to the unit or realty or without destruction of the intended usefulness of the realty.

(12) Residence or residential property--Property that is used as a family dwelling, a multifamily apartment or housing complex, nursing home, condominium, or retirement home. The term includes homeowners association-owned and apartment-owned swimming pools that are for the use of the homeowners or tenants, laundry rooms for tenants' use, and other common areas for tenants' use. The term does not include hotels or any other facilities that are subject to the hotel occupancy tax.

(13) Separated contract--A contract in which the agreed contract price is divided into a separately stated agreed contract price for incorporated materials and a separately stated amount for all skill and labor that includes fabrication, installation, and other labor that is performed by the contractor. If prices of incorporated materials and labor are separately stated in any part of the contract or in a document that becomes part of the contract according to the terms of the contract, adding the charges together to give a sum total does not change the contract into a lump-sum contract. For example, a contract that requires separated invoices is a separated contract. Cost-plus contracts are considered separated contracts if the cost of labor is separately stated from the cost for incorporated materials.

(b) Tax responsibilities of contractors who improve real property of nonexempt customers.

(1) Equipment. A contractor must pay sales tax at the time of purchase, lease, or rental on the sales price of equipment used to perform a contract. A contractor must accrue and remit use tax on the sales price of equipment purchased, leased, or rented for use in Texas from an out-of-state seller unless the out-of-state seller collected Texas use tax. See §3.346 of this title (relating to Use Tax). Texas allows a credit against Texas use tax when the same property is subject to a legally imposed sales or use tax of another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(2) Consumable item. Except as provided by subparagraph (B) of this paragraph, a contractor must pay tax at the time of purchase on consumable items that are not physically incorporated into the customer's property.

(A) A contractor may not collect tax from the customer on a charge for consumable items except as provided by subparagraph (B) of this paragraph.

(B) A contractor who has a separated contract may issue a properly completed resale certificate to a supplier in lieu of tax for consumable items if title to the consumable items transfers to the contractor's customer at or before the time that the contractor takes possession of the consumable items, and further if the consumable items are immediately marked, labeled, or otherwise physically identified as the customer's property, when practicable. The contractor must separately state the charge for these consumable items to the customer and must collect sales tax from the customer, unless the customer qualifies for exemption under Tax Code, §151.309 or §151.310, or under other provisions that grant the customer exemption from sales tax on its purchases. See §3.322 of this title (relating to Exempt Organizations).

(3) Lump-sum contracts.

(A) A contractor who performs lump-sum contracts owes tax on all materials, consumable items, equipment, taxable services, and other taxable items that are used by the contractor or incorporated into a customer's property. The contractor must pay tax to suppliers when the contractor purchases, leases, or rents the taxable items. The contractor must accrue and remit use tax on taxable items that are purchased, leased, or rented from an out-of-state seller unless the out-of-state seller collected and gave the contractor a receipt for Texas use tax. The contractor shall not collect from a customer any amount represented to be tax on a lump-sum charge or on any portion of the charge except as provided under subparagraph (E) of this paragraph. A lump-sum contractor must refund to the customer any tax that is collected in error or the contractor must remit the tax to the state. The contractor may not retain such tax.

(B) A contractor who, in addition to performing lump-sum contracts, sells, leases, or rents taxable items at retail or performs separated contracts may maintain a tax-free inventory of items that are held for resale. A contractor who, in addition to performing lump-sum contracts, performs nonresidential real property repair, restoration, and remodeling services and resells taxable items as part of those taxable services may also maintain a tax-free inventory of items that are held for resale. See §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). A contractor may issue a properly completed resale certificate instead of paying tax on items that are purchased for a tax-free inventory when the contractor does not know at the time of purchase whether the item will be resold or used in the performance of a lump-sum contract. A contractor must hold a sales tax permit to issue a resale certificate, and must collect, report, and remit tax to the comptroller as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) when the contractor sells, leases, or rents taxable items. A contractor who separately states a charge for equipment that the contractor uses is not renting that equipment to the customer.

(C) A contractor who purchases taxable items under a valid resale certificate and uses the items in a taxable manner owes sales or use tax on the items. For example, a contractor who incorporates materials from a tax-free resale inventory into realty under a lump-sum contract must accrue and remit tax based on the purchase price of the materials. The contractor must remit the tax to the comptroller for the reporting period in which the materials were used. A contractor who purchases items that are specifically intended for use in a lump-sum contract may not issue resale certificates in lieu of tax for such items. See §3.285 of this title (relating to Resale Certificates; Sales for Resale).

(D) A contractor may not accept a direct payment exemption certificate when the contractor performs a lump-sum contract for a person who holds a direct payment permit. The lump-sum contractor owes tax on all taxable items that are used on the job or that are incorporated into the direct payment permit holder's realty. A direct payment permit holder may not authorize a contractor or any other person to purchase tax free any taxable item through use of the direct payment permit holder's permit. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(E) A ready mix concrete contractor must separate the charge for the concrete from other charges associated with the contract, and invoice the customer for each yard of concrete produced and consumed for the improvement of real property. The ready mix concrete contractor may issue a resale certificate in lieu of paying sales tax on taxable items (e.g., processed materials) incorporated into the concrete. The ready mix concrete contractor must collect and remit the tax due on the concrete produced and consumed. The tax rate in effect at the job site location is applied to the greater of the actual invoice price of the component materials or the fair market value of the concrete incorporated into the project. For the purposes of this subparagraph, fair market value is the amount that a purchaser would pay on the open market for concrete. The fair market value will be determined on a case by case basis, taking into consideration relevant factors such as cost of component materials, location of job site, volume, and prices charged by other concrete contractors in the area. Contracts entered into prior to September 1, 2007, are excluded from the requirements of this subparagraph provided the contract terms do not allow for the pass-through of taxes by the ready mix concrete contractor to the purchaser for the duration of the contract period. This subparagraph does not apply to ready mix concrete contractors providing concrete for a public works project.

(4) Separated contracts.

(A) Except as otherwise provided in this section, a contractor who performs a separated contract is a retailer of all materials that are physically incorporated into the realty that is being improved. As a retailer, the contractor must collect tax from the customer based upon the agreed contract price of the incorporated materials. The tax rate must be applied to the agreed contract price of materials, or to the price of the materials to the contractor, whichever is greater. A contractor who performs a separated contract is also a retailer of taxable services that are sold under the provisions of subparagraph (D) of this paragraph, and of consumable items that are sold under the provisions of paragraph (2)(B) of this subsection. The contractor may accept a properly completed resale or exemption certificate from a customer who claims an exemption.

(B) A contractor who performs a separated contract must hold a sales tax permit and collect, report, and remit the tax as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). A contractor who purchases taxable items for resale as part of a separated contract may issue resale certificates to suppliers in lieu of tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). A contractor may not issue a resale certificate and must pay tax on the purchase, rental, or lease of equipment that is intended for use in the performance of a contract.

(C) A contractor may maintain a tax-paid inventory of materials. If the contractor incorporates tax-paid materials into realty under a separated contract or sells them at retail or transfers the materials to a customer as part of a taxable service, then the contractor must collect tax from the customer based upon the agreed contract price of the materials or upon the sales price of the taxable service. The contractor may claim a credit for tax paid on materials resold to customers. The contractor must remit tax to the comptroller on any difference that exists between the price that the customer paid and the price that the contractor paid.

(D) A contractor who performs separated contracts may issue properly completed resale certificates in lieu of tax on taxable services that the contractor resells to its customers. Examples include landscaping, surveying, security services (alarm systems), that are incorporated into the customer's realty, and the final clean-up (janitorial services) of the construction site. The charges for taxable services that are resold to the customer must be separated from the charges for incorporated materials and other charges, and the contractor must collect tax from the customer on charges for the taxable services and incorporated materials. A contractor who performs a separated contract may not issue a resale certificate for a taxable service that the contractor uses or consumes, such as a security service to secure the job site, telecommunication service, and daily clean-up (janitorial service or garbage collection and removal) of the construction site. A contractor who performs residential new construction should refer to paragraph (7) of this subsection.

(E) A contractor who improves realty for a direct payment permit holder may accept a properly completed direct payment exemption certificate in lieu of tax on all tangible personal property that is incorporated into the direct payment permit holder's realty. The contractor owes tax on equipment the contractor purchases, rents, or leases for use in the performance of the contract with a direct payment permit holder. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). A contractor who performs a separated contract may not accept a direct payment exemption certificate in lieu of tax on consumable items unless paragraph (2)(B) of this subsection applies. A contractor who performs a separated contract may accept a direct payment exemption certificate in lieu of tax on taxable services only under the circumstances set out in paragraph (4)(D) of this subsection.

(5) Contracts versus bids and change orders. For tax purposes, the terms of a contract control over the terms of a bid. For example, if the bid is lump-sum but the written contract is separated, then the contract determines the tax responsibilities of the parties, and the customer is liable for tax on incorporated materials. The terms of a contract also control change orders. If the contract is lump-sum, then change orders will be treated as lump-sum even if the change orders show charges for incorporated materials separate from other charges. If the contract is separated and change orders are for lump-sum amounts, then the lump-sum amounts will be treated as charges for incorporated materials unless the contractor can reasonably demonstrate the portion attributable to labor.

(6) Different types of contracts between contractors and subcontractors. For tax purposes, subcontractors are not required to use the same type of contract as the general contractor. For example, a general or prime contract may be lump-sum, while some or all subcontracts may be separated. Each subcontractor's individual contract governs the subcontractor's tax responsibilities. In the example given, the subcontractors with separated contracts must collect sales tax from the general contractor. The general contractor must not collect any tax from the general contractor's customer. When the general or prime contract separately states labor and incorporated materials but some of the subcontracts are lump-sum, the prime or general contractor should treat the lump-sum charges as part of its separately stated labor charge and should not collect tax from the prime contractor's customer on those charges from lump-sum subcontractors.

(7) Real property services. A contractor is not required to pay tax on real property services that are purchased as part of the construction of a new residential structure or as part of an improvement that is located immediately adjacent to the new structure and that is used in the residential occupancy of the structure. The contractor must issue a properly completed exemption certificate or other acceptable documentation to the service provider. If the comptroller subsequently determines that the work is taxable, then the contractor will be liable for all taxes, penalties, and interest that accrue upon such purchases. For the purposes of this paragraph, "contractor" includes a builder, developer, speculative builder, or other person who acts as a builder to improve residential real property.

(8) Materials that customers provide. A contract may specify that a customer will provide materials and that the person who performs improvements will provide the skill and labor that are necessary to incorporate the materials into realty. Under this type of contract, the person who provides the skill and labor will not incur tax liability on the materials. The customer is liable for the tax on the materials and must pay tax at the time of purchase of the materials.

(9) Noninstalled items. A person who manufactures an item for sale but who is not responsible for the incorporation of the item into realty is a manufacturer who is subject to the provisions of §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). For example, cabinet makers who do not affix the cabinets to realty are manufacturers and not contractors.

(10) Local tax. A contractor's responsibility for local sales and use taxes depends on the type of contract entered into with the customer.

(A) A contractor who has entered into a separated contract with the customer must collect local taxes on the charge for materials based on the location of the job site.

(B) A contractor who has entered into a lump-sum contract with the customer is the consumer of all materials used to perform a lump-sum contract.

(i) The lump-sum contractor should pay tax to suppliers on all materials at the time of purchase, unless the contractor maintains a valid tax-free inventory or holds a direct pay permit.

(ii) When the local sales taxes collected by the supplier are less than the 2.0% local tax cap, additional local use taxes are due based on the location where the goods are first stored or used. Local use tax is not due if the supplier collected a local sales tax for the same type of taxing jurisdiction.

(iii) When a lump-sum contractor has items shipped to the jobsite from outside of Texas, the contractor is responsible for accruing local taxes based on the location of the jobsite.

(iv) The lump-sum contractor must accrue local use tax based on the purchase price of the taxable item. The local use tax is due in the reporting period in which the item was first stored, used, or otherwise consumed in a local taxing entity.

(11) Enterprise projects and defense readjustment projects. In order for an enterprise project or a defense readjustment project to avail itself of certain sales tax refunds, the project must enter into a separated contract, and the charges for items that qualify for enterprise project or defense readjustment project refunds must be separately stated. A contractor who performs a separated contract must collect sales tax from the project on the sales price of the incorporated materials. See §3.329 of this title (relating to Enterprise Projects, Enterprise Zones, and Defense Readjustment Zones).

(12) Manufacturing facilities. For a manufacturer to qualify for sales tax exemptions on manufacturing equipment that is installed under a contract to improve real property, the manufacturer must enter into a separated contract. Additionally, the contract must separately state the charge for the qualifying manufacturing equipment. See §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(c) Tax responsibilities of contractors who perform lump-sum and separated contracts for exempt organizations.

(1) Exemption certificates and other required proof of exemption. A contractor must obtain properly completed exemption certificates to document exempt contracts. Written contracts or written purchase orders that are issued by governmental entities exempted under Tax Code, §151.309, are acceptable documentation of exempt contracts.

(2) Contractor liability.

(A) A contractor may claim an exemption under Tax Code, §151.311, on a purchase of a taxable item for use under a contract to improve realty for an organization that is exempt under Tax Code, §151.309 or §151.310. If the comptroller subsequently determines that the organization is not exempt, then the contractor is liable for all taxes, penalties, and interest that accrue upon such purchase. If the validity of a claimed exemption or the exempt status of the customer is unclear, then the contractor may not accept the exemption certificate in good faith and should request additional evidence of the exempt status of the contract. If the customer claims to be an exempt organization, then a letter of sales and use tax exemption from the comptroller that is addressed to the customer relieves the contractor from further inquiry regarding the exempt status of the customer. See §3.287 of this title (relating to Exemption Certificates).

(B) A contract with a private party to improve real property owned by an exempt entity, other than a governmental entity described in Tax Code, §151.309, is not an exempt contract if the improvement to real property is for the primary use and benefit of the private party. However, a contractor in a non-exempt contract may purchase tax free tangible personal property that is used to improve real property owned by a governmental entity described in Tax Code, §151.309, if that tangible personal property is donated to the governmental entity and if the following conditions are satisfied:

(i) the contract between the contractor and the private party is a separated contract. See subsection (b) of this section for a discussion of lump-sum and separated contracts;

(ii) the contract provides that title to the materials used to perform the contract passes to the private party when the materials are delivered to the job site but before they are incorporated into the realty or used by either the contractor or the private party; and

(iii) the contract provides that the private party intends to donate the materials to the governmental entity before the materials are incorporated into the realty or used by the contractor. The private party must provide the contractor with a letter of intent or other document from the governmental entity that states its intent to accept the property.

(3) Materials that exempt customers provide. A contract may specify that the exempt customer will provide the materials and the contractor will provide the skill and labor that are necessary to perform the contract. Under this type of contract, the contractor will not incur tax liability on the materials. The exempt customer may issue exemption certificates to suppliers in lieu of tax when purchasing the materials. Materials that are incorporated into real property improvements that are not related to the exempt purpose of the customer exempt under Tax Code, §151.310(a)(1) or (2), are taxable. In this situation, the exempt customer must pay tax to suppliers when purchasing the materials. See also §3.322 of this title (relating to Exempt Organizations).

(4) Exempt items. The following items are exempt from sales and use tax when purchased for use in the performance of an exempt contract:

(A) tangible personal property that is incorporated into the realty;

(B) consumable items that are necessary and essential to the contract and are completely consumed at the job site; and

(C) taxable services that are performed at the job site and are:

(i) expressly required by the exempt contract to be provided or purchased by the contractor; or

(ii) integral to the performance of the exempt contract.

(5) Contractor's exemption or resale certificate. A contractor who performs a lump-sum or separated contract may issue a properly completed exemption certificate to a supplier for the purchase of exempt items that are identified in paragraph (4) of this subsection. The certificate must be properly completed and identify the contractor as the purchaser, the exempt entity for whom the improvements are made, and the project for which the items are being purchased. See §3.287 of this title (relating to Exemption Certificates). A contractor may choose to issue a properly completed resale certificate when purchasing materials that will be incorporated into the customer's realty under a separated contract.

(6) Equipment. All machinery and equipment, including repair and replacement parts and accessories, that a contractor uses to perform contracts for any exempt entity are taxable. A contractor who purchases, rents, or leases equipment for use on a contract to improve realty for an exempt entity must pay tax on that purchase, rental, or lease.

(d) Development work. For the purposes of this subsection, development work means a contract with a private party to improve real property by building public infrastructure, such as roads or sewer lines, provided that the improvements are dedicated to and will be accepted by a governmental entity. To qualify as an exempt contract, the private party must dedicate the realty and the improvements to the governmental entity before the work begins, and the governmental entity must accept or conditionally accept the realty and the improvements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry
General Counsel
Comptroller of Public Accounts
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Proposal publication date: December 21, 2007
For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.109

The Comptroller of Public Accounts adopts an amendment to §9.109, concerning procedures for protesting preliminary findings of taxable value, without changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8098).

Subsections (j)(2) and (k)(1) are being amended to add email as an appropriate method of service for the hearings examiner to deliver his or her decision.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, §403.303(c), which requires the comptroller to adopt procedural rules governing the conduct of protest hearings, including notice of the comptroller's decision on the hearing.

The amendment implements Government Code, §403.303(b), which requires the comptroller to order the appropriate changes in the values of the petitioner who brought the protest.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry
General Counsel
Comptroller of Public Accounts
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.119, 745.509, 745.601, 745.611, 745.615, 745.623, 745.625, 745.626, 745.629, 745.651, 745.663, 745.683, 745.685, 745.687, 745.693, 745.701, 745.707, and 745.735; the repeal of §745.627; and new §745.630, in its Licensing chapter. The amendments to §745.601 and §745.615 are adopted with changes to the proposed text published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1285). The amendments to §§745.119, 745.509, 745.611, 745.623, 745.625, 745.626, 745.629, 745.651, 745.663, 745.683, 745.685, 745.687, 745.693, 745.701, 745.707, and 745.735; the repeal of §745.627; and new §745.630 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments, repeal, and new section is to: (1) implement new fingerprint-based criminal history checks against the Department of Public Safety (DPS) and Federal Bureau of Investigation (FBI) databases for children in child care, including new fingerprint-based criminal history checks required by amendments to §42.056, Human Resources Code, that were enacted in Senate Bill 758, 80th Legislative Session, and new fingerprint-based criminal history checks required by the federal "Adam Walsh Child Protection and Safety Act of 2006" (the Adam Walsh Act); (2) implement new out-of-state central registry checks in certain foster and adoptive homes as required by the

Adam Walsh Act; (3) expand the list of criminal convictions that may be used to prevent a person from having access to children in care; (4) clarify terminology and amend certain procedures relating to the background check and risk evaluation processes; (5) add child-placing agencies to the types of child-care operations that are exempt from the payment of an amended license fee; and (6) incorporate changes as a result of House Bill (HB) 1385, Section 1, 80th Legislative Session, regarding educational exemptions. The changes will not only bring Child Care Licensing (CCL) rules in compliance with state and federal law, but will significantly enhance protections for children in child care by identifying certain persons with criminal histories or child abuse or neglect findings that are not identified under the current background check process and ensuring that such persons do not pose a risk to children in care. In addition, these changes, which will necessitate the use of fingerprint-based criminal history checks, will reduce the incidence of "false positive" matches, that sometimes result from name-based criminal history checks, and cause delays in hiring qualified applicants in child-care operations.

Section 745.119 revises the current Texas Private School Accreditation Commission education exemption to only apply in a county that has a population of less than 25,000; revises an educational exemption to reduce the age of children from five to four years if the school is located in a county with a population of less than 25,000; and adds preschool to the list of grades offered at the school.

Section 745.509 adds child-placing agencies to the list of operations that are exempt from paying a fee to amend their license.

Section 745.601 amends terminology used in subsequent sections of this chapter concerning background checks in order to clarify who is subject to the new fingerprint-based criminal history check and out-of-state central registry checks.

Section 745.611 adds out-of-state central registry checks to the types of databases searched by DFPS when conducting background checks on certain persons, and significantly clarifies the names and explanation for each type of background check.

Section 745.615 is significantly amended to specify those persons for whom a fingerprint-based criminal history check is required under new mandatory provisions in §42.056(b-1) of the Human Resources Code and the federal Adam Walsh Act, or under permissive authority of §42.056(b) of the Human Resources Code. In addition, this section is amended to specify who is subject to an out-of-state central registry check.

Section 745.623 makes procedural changes to the methods that may be used by a child-care operation to submit its background check request and to require that certain new information be provided by child-placing agencies when submitting a background check for a foster or adoptive parent applicant who has lived outside the state of Texas any time during the five years preceding the person's application to become a foster or adoptive parent.

Section 745.625 clarifies language relating to when a background check request must be submitted. This clarification is necessary to implement the new background checks required under §745.615.

Section 745.626 clarifies how soon a person for whom a background check has been requested may provide direct care or have direct access to a child in care. The primary changes related to child-care centers, which are needed to comply with changes made to Human Resources Code §42.506 regarding mandatory fingerprint-based criminal history checks for child-care centers.

Section 745.627 is repealed, and the language is incorporated in §745.623.

Section 745.629 describes the procedure used for submitting a fingerprint-based criminal history check, including a requirement to use the contractor selected by DPS for electronic submission of fingerprints when conducting a background check.

New §745.630 provides that a person does not require a new fingerprint-based criminal history check if the person has a fingerprint-based criminal history on file with DFPS and more than 24 months has not elapsed since the person underwent a background check with Licensing.

Section 745.651 adds several criminal offenses to the list of offenses for which there is a 10-year bar to persons being present in a child-care operation.

Section 745.663 clarifies the process for clearing up any claimed errors in a name-based criminal history check match.

Section 745.683 clarifies that a child-placing agency must request a risk evaluation on a non-client child of a foster or adoptive parent and requires that the risk evaluation for a licensed administrator must be requested by the CPA, general residential operation, or residential treatment center.

Section 745.685 requires that risk evaluations must be sent to the DFPS Centralized Background Check Unit, and the risk evaluations must be returned within 21 days if the person is continuing to work in child-care pending a risk evaluation.

Section 745.687 clarifies the documentation that must be submitted to establish that a person has completed all of the conditions of probation, including the date the probation was completed for deferred adjudications.

Section 745.693 adds certain criminal convictions to the list of those which bar a person from being present at a child-care operation; and clarifies who is eligible for a risk evaluation and who can be present at a child-care operation pending the outcome of the risk evaluation.

Section 745.701 clarifies when a person who has been arrested for an offense may be present in a child-care operation.

Section 745.707 transfers authority for approval of a risk evaluation from the Director of Child Care Licensing to the Manager of the DFPS Centralized Background Check Unit.

Section 745.735 clarifies that when a DFPS central registry check is conducted on a person who is a minor and that person is found to be a designated perpetrator, notice of the finding will be sent to the minor's parent rather than to the minor.

The sections will function by ensuring that children in regulated child care will be better protected as a result of the expanded criminal history central registry checks and related changes to the background check and risk evaluation process. These changes will minimize the likelihood that a person who has engaged in prior criminal activity that may pose a risk to children, or who has previously been found to have abused or neglected a child in another state, will have access to children in child care, thus keeping children safer from persons who may pose a danger to the health and safety of those children.

During the public comment period, DFPS received comments from Austin Community College, University of Texas-Austin,

Texas Licensed Child Care Association, Texas Alliance of Child and Family Services, Faith School, DePelchin Children's Center, Head Start Program - CenTex Family Services, Inc., Advance Child Care, Inc., Tree House Academy, Church at Canyon Creek, First Presbyterian Church of Austin, Oh Miss Tempie Kids, Child Protective Services, and nine individuals. The comments related to various issues. Two of the comments supported the new requirements. Eleven of the comments involved Integrated Biometric Technology (IBT), DPS' electronic fingerprint vendor. Some of the IBT concerns noted include: appointment scheduling delays, unsatisfactory customer service, and the inconvenience of the available IBT locations. Eleven of the comments addressed the adverse economic impact on providers. Three comments were general in nature, including a concern on duplication of fingerprint checks from other state agencies. Fifteen referred to the rules published in the *Texas Register*. A summary of the comments and DFPS' responses follow:

Comments concerning §745.601: Three commenters expressed concern that the proposal would require background checks on all people over the age 14, who regularly or frequently visits a foster home, including foster children friends, study buddies, extended family of the foster parents, etc.

Response: Staff agree in part and disagree in part with these comments. Staff agrees that this rule is unclear and as worded is over burdensome regarding a foster child's friends and recommends a clarification. Staff is recommending a change to the language that is consistent with current policy. Staff do not agree that the rule is unclear or over burdensome regarding the extended family of the foster parents. The published rule gives sufficient latitude. If family members rarely visit, then a background check is not required. On the other hand, if family members like adult children visit frequently, then a background check should be obtained and is required by this rule. DFPS is revising paragraph (3) to state: "For foster homes, the following individuals are not considered frequently present at a foster home: (A) A child unrelated to a foster parent who visits the foster home unless the child is responsible for the care of foster children or there is a reason to believe that the child has a criminal history or previously abused or neglected another child; and (B) An adult unrelated to a foster parent who visits the foster home unless the adult has unsupervised access to children in care or there is a reason to believe that the adult has a criminal history or previously abused or neglected a child."

Comments concerning §745.615:

(1) One commenter declared his approval of fingerprint/background checks; however, he also noted there are numerous gaps and inconsistencies in the rule.

Response: CCL conducted meetings across the state throughout the summer in order to assist providers in preparation for the change in the rules. Where gaps or inconsistencies were noted, DFPS has clarified the language of the rules prior to publication and via these comments and responses. DFPS is including as much information as possible regarding fingerprint/background checks on the Agency website. DFPS is not revising the rule as a result of this comment.

(2) Two commenters support FBI background checks for child-care providers, but noted concern over students in training programs needing FBI checks.

Response: This issue was addressed prior to the rule publication. As long as these trainees/students are in classrooms with other teachers and/or professionals and are not counted in the child/caregiver ratio nor allowed unsupervised access, they are not required to be fingerprinted.

(3) Three commenters expressed concern that the requirements over who needs a background check conflict fundamentally with the concept of the foster care system that foster children be given as normal a home life as possible.

Response: DFPS is revising the definition of "frequently present at your operation" in §745.601(3) as a result of the comment.

(4) One commenter questioned whether subsection (b)(2)(A) and (2)(B) apply to prospective homes only, which is consistent with current policy?

Response: Subsection (b)(2)(A) applies to prospective homes only, which is consistent with current policy. Subsection (b)(2)(B) mistakenly applies to all foster homes and is not consistent with current policy. DFPS is revising subsection (b)(2)(B) to state "any adults 18 years or older living in the home of a foster or adoptive parent applicant," which is consistent with current policy.

Comment concerning §745.630: Five commenters misunderstood the rule change proposal, commenting the language is unclear as to how often fingerprint checks will be required.

Response: Individuals who work at multiple child-care operations will only have to pay for and complete one FBI fingerprint check. Individuals who continue working in any child-care operation and renew their DFPS name-based background check at least every 24 months, regardless of whether they move to another DFPS-regulated operation, will not be required to submit a new FBI fingerprint check. DFPS is adopting this section without change.

Comments concerning Integrated Biometric Technology (IBT): Three commenters expressed concern over the appointment scheduling delays with IBT. One commenter expressed concern that the fingerprint process is inconvenient and unpleasant, and the staff at IBT was rude and unpleasant. Seven commenters expressed concern over the inconvenience of the IBT locations.

Response: DFPS continues to work with DPS' electronic fingerprint vendor, IBT, to resolve the challenges related to these concerns. Weekly meetings are being held between DFPS, DPS, and IBT to resolve issues. When this legislative action was first proposed in February 2007, CCL staff immediately began working with both DFPS Information Technology staff and DPS on the project, and it soon became clear that there were certain things that DFPS staff would and would not be able to do. One of the first things investigated was the idea of using fingerprints obtained by DPS in the process of issuing driver's licenses, but, because only thumbprints are collected, that would not be acceptable for either the DPS or the FBI for a background check. Another concern was whether there would be enough DPS contracted IBT sites across the state to ensure that providers could conveniently send their staff or applicants to be fingerprinted, and DFPS is still working closely with DPS and IBT in this effort.

Comments concerning adverse economic impact: Three commenters stated fingerprinting all staff is a financial burden on centers. Turnover is high in this industry and having to process fingerprints is costly for short-term, part-time help. One commenter expressed concern that this is being funded by private agencies rather than by the state. One commenter stated the imposition of fingerprint checks poses a substantial cost to residential child-care facilities. If DFPS cannot fund this fiscal im-

pact, the standard should not be adopted. Two commenters commented the cost of fingerprinting will be a hardship for child care homes. One commenter asked why the cost was so high and requested that fingerprinting be done at TLCCA or TAEYC conferences. One commenter expressed concern that the background checks are too costly for child-care centers and many parents cannot afford to cover these expenses either. One commenter was concerned that the $44.20 does not include time and gas expense. One commenter stated she believes that this added cost is unreasonable and could affect the quality of care in her center.

Response: Fingerprint background checks are a statutory mandate. The cost of fingerprinting and background checks is not controlled by DFPS and none of the money received comes to DFPS; DPS receives $15, the FBI receives $24, and IBT receives $9.95 for conducting each fingerprint scan. The cost to have background checks performed on all day care staff in the state was estimated at about $5.5 million and, since none of the money generated in the process would come to DFPS, no funds were allocated to DFPS in order to perform the function. Since hundreds of thousands of background checks will be performed each year, staff looked into as many different options as possible in order to implement the process smoothly. The public benefit anticipated as a result of the change will be that children in regulated child care will be better protected as a result of the expanded criminal history and central registry background checks.

General comments:

(1) One commenter indicated only one set of prints should be required if an individual works in child care and is also employed through another agency requiring fingerprinting (e.g. teachers, real estate agents, etc.).

Response: DPS does not retain or share the results of previous fingerprint checks, so in order to know the results and meet the statutory requirements we must require a fingerprint check through DFPS.

(2) One commenter indicated the legislation was done too quickly.

Response: These new requirements were part of Senate Bill 21 (not passed) and later SB 758 (passed) and the bills were reviewed and had public hearings during the legislative session.

(3) One commenter indicated they are an in-home child care provider and fully support the new requirements for criminal background checks.

Response: DFPS appreciates the comment.

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.119

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements House Bill 1385 Section 1, 80th Legislative Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200802365
Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER E. FEES

40 TAC §745.509

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.056, as enacted by Senate Bill 758, 80th Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Department of Family and Protective Services
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SUBCHAPTER F. BACKGROUND CHECKS
DIVISION 1. DEFINITIONS

40 TAC §745.601

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and 42 USC §671.

§745.601. What words must I know to understand this subchapter?

These words have the following meanings:

(1) Continuous stay--Staying overnight or consecutive nights at an operation.

(2) Direct care or direct access--Being counted in the child-to-caregiver ratio or having any responsibility that requires contact with children in care.

(3) Frequently present at your operation--More than two non-continuous visits at your operation in a 30-day period; one continuous stay per year at your operation and the duration of the stay exceeds seven days; or more than two continuous stays per year at your operation and the duration of each stay exceeds 48 hours. For foster homes, the following individuals are not considered frequently present at a foster home:

(A) A child unrelated to a foster parent who visits the foster home unless:

(i) The child is responsible for the care of foster children; or

(ii) There is a reason to believe that the child has a criminal history or previously abused or neglected another child; or

(B) An adult unrelated to a foster parent who visits the foster home unless:

(i) The adult has unsupervised access to children in care; or

(ii) There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.

(4) Non-continuous visit--Being physically present at an operation for a period of time of less than 24 hours. Multiple or periodic visits to an operation within the same day is one visit.

(5) Regularly--On a scheduled basis.

(6) Unsupervised access--The person is allowed to be with children without the presence of a qualified caregiver.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
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DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §§745.611, 745.615, 745.623, 745.625, 745.626, 745.629, 745.630

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042, 42 USC §671, and HRC §42.056, as enacted by Senate Bill 758, 80th Session.

§745.615. On whom must I request background checks?

(a) You must request a name-based criminal history check and a DFPS central registry check for:

(1) The directors, owners, operators, or administrators of the operation;

(2) Employees and applicants you intend to hire;

(3) Any person(s), including volunteers, who are counted in any child/caregiver ratio required in minimum standards;

(4) Person(s) applying to adopt or foster children through any licensed or certified child-placing agency;

(5) Any person who has unsupervised access with children in care;

(6) Non-client residents of the operation that are 14 years or older;

(7) Applicants for a child-care administrator's license; and

(8) Any other person 14 years or older, excluding client residents, who will regularly or frequently be present at your operation while children are in care.

(b) In addition:

(1) You must request a fingerprint-based criminal history check for any person who requires a background check under subsection (a) of this section if that person has lived outside of Texas any time during the previous five years or there is reason to believe other criminal history exists;

(2) Child-placing agencies and independent foster homes that will accept the placement of children in the conservatorship of DFPS must request a fingerprint-based criminal history check for:

(A) Any foster and/or adoptive parent applicant, including a person who has adopted in the past and who applies to adopt again unless the person is also verified as a foster/adopt home; and

(B) Any adults 18 years or older living in the home of a foster or adoptive parent applicant; and

(3) Child-care centers must request a fingerprint-based criminal history check for:

(A) The directors, owners, operators, or administrators of the center;

(B) Employees and applicants you intend to hire;

(C) Any person(s), including volunteers, who are counted in the child/caregiver ratio specified in §746.1601 of this title (relating to How many children may one caregiver supervise?), §746.1701 of this title (relating to How many children may one caregiver supervise if 12 or fewer children are in care?), and §746.1901 of this title (relating to If I operate a get-well care program, must I use a different child/caregiver ratio?); and

(D) Any person who has unsupervised access to children in care.

(c) In addition, child-placing agencies and independent foster homes that will accept the placement of children in the conservatorship of DFPS must request an out-of-state central registry check for a foster or adoptive parent applicant who has lived outside of the state any time during the previous five years preceding the person's application to become a foster or adoptive parent.

(d) You do not have to request a background check on professionals who have currently cleared a background check in compliance with another governmental entity's requirements, if you do not employ or contract with the professional.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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40 TAC §745.627

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §745.651, §745.663

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §§745.683, 745.685, 745.687, 745.693, 745.701, 745.707

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and 42 USC §671.

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DIVISION 5. DESIGNATED AND SUSTAINED PERPETRATORS OF CHILD ABUSE OR NEGLECT

40 TAC §745.735

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

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CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.43, 749.2001, 749.2903, and 749.2905, in its Child-Placing Agencies chapter. The amendment to §749.2903 is adopted with a change to the proposed text published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1295). The amendments to §§749.43, 749.2001, and 749.2905 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to facilitate more inspections in foster family homes, thereby helping to ensure that fire inspections do not present a barrier to verifying or maintaining foster family homes. Section 749.43 adds a definition for certified fire inspectors. In §749.2001, some paragraphs are renumbered as a result of the change in §749.43. Section 749.2903 outlines expectations for fire and health inspections in foster homes. The amendment separates the expectations for foster family homes versus foster group homes, in order to clarify differing expectations depending on the type of foster home. Section 749.2905 adds a reference to a certified fire inspector to be consistent with changes to §749.2903.

The amendments will function by ensuring that child-placing agencies will be able to verify and retain more foster homes for children in need of substitute care.

During the comment period, DFPS received comments from Catholic Charities of Houston, DePelchin Children's Center, Texas Foster Family Association, Texas Association of Child Placing Agencies, Texas Alliance of Child and Family Services, Homes 4 Good, and the Harris County Fire Marshal's office. All comments concerned §749.2903. The child-placing agencies and industry associations support the rule change. The Harris County Fire Marshal's office indicated that a fire inspector should work for the local authority, thus not favoring the rule change. In addition, the State Fire Marshal's office has explained that the certification through the Texas Commission on Fire Protection does not promulgate standards for the inspections conducted by certified fire inspectors. Under their advice, DFPS added additional language to ensure that the inspections conducted by these individuals are governed by standards in fire safety. DFPS is adopting §749.2903 with the following addition to paragraph (b)(1): "A certified fire inspector who is not a state or local fire inspector must conduct the inspection in accordance with the Texas State Fire Marshal's adopted standard, NFPA Life Safety Code 101 appearing in 28 TAC §34.303."

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §749.43

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2008.

TRD-200802372
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 438-3437

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SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION

DIVISION 1. DEFINITIONS

40 TAC §749.2001

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2008.

TRD-200802373
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 438-3437

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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT
DIVISION 1. HEALTH AND SAFETY

40 TAC §749.2903, §749.2905

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2903. Who must conduct fire and health inspections at a foster home?

(a) All foster homes are required to obtain fire and health inspections.

(b) The requirements related to fire and health inspections for foster family homes are as follows:

(1) You must determine whether there is any local authority or certified fire inspector to conduct health and fire inspections. You must document all contacts with the date, name of person contacted, and the person's response to the request to complete an inspection. A certified fire inspector who is not a state or local fire inspector must conduct the inspection in accordance with the Texas State Fire Marshal's adopted standard, NFPA Life Safety Code 101 appearing in 28 TAC §34.303.

(2) If no local authority or certified fire inspector exists to complete a fire inspection for the home, you must request that the state Fire Marshal's Office do the inspection.

(3) If no local authority exists to complete a health inspection for the home, you must request a health inspection from the Department of State Health Services.

(4) If, after exploring and documenting all efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, you may use our Fire Prevention Checklist form.

(5) If, after exploring and documenting all efforts to obtain a health inspection for a home, you cannot obtain a health inspection, you may use our Environmental Health Checklist form.

(c) The requirements related to fire and health inspections for foster group homes are as follows:

(1) You must determine whether there is any local authority to conduct health and fire inspections. You must document all contacts with the date, name of person contacted, and the person's response to the request to complete an inspection.

(2) If no local authority exists to complete a fire inspection for the home, you must request that the state Fire Marshal's Office do the inspection.

(3) If no local authority exists to complete a health inspection for the home, you must request a health inspection from the Department of State Health Services.

(4) If, after exploring and documenting all efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, you may use our Fire Prevention Checklist form.

(5) If, after exploring and documenting all efforts to obtain a health inspection for a home, you cannot obtain a health inspection, you may use our Environmental Health Checklist form.

(d) Once you document that a health and/or fire inspection is not available in a particular area, you may use that documentation for any foster home verified by you in that area. A copy of the documentation must be on file in each foster home record to which the documentation applies.

(e) Documentation that a health and/or fire inspection is not available in a particular area is valid for one year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2008.

TRD-200802374
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 438-3437

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 17, Subchapters A - H, concerning Marketing and Promotion, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Chapter 17, Subchapters A - H, by the department at this time indicates that the reason for readopting without changes all sections in Chapter 17, Subchapters A - H, continues to exist.

The department is accepting comments on the review of Chapter 17, Subchapters A - H. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments may be submitted to Gene Richards, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200802449
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 12, 2008

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Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs ("Department") files this Notice of Intent to Review the following sections of Title 10 of the Texas Administrative Code, Chapter 1, Subchapter A, concerning Administration:

§1.3. Delinquent Audits and Related Issues.

§1.4. Protest Procedures for Contractors.

§1.6. Historically Underutilized Businesses.

§1.7. Staff Appeals Process.

§1.8. Board Appeals Process.

§1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers.

§1.17. Alternative Dispute Resolution and Negotiated Rulemaking.

The text of the rule sections will not be published. The review is being conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider for repeal, readoption or readoption with amendments, their administrative rules every four years. This review shall assess only whether the reasons for initially adopting the rules continue to exist. The Department is not proposing any amendments or repeals at this time.

For 30 days following the publication of this notice, the Department will accept public comments concerning whether the reasons for initially adopting each rule continues to exist.

The Department intends to publish a notice readopting these rules at the end of this comment period unless comments are received that show that the reasons for initially adopting one or more of the above rules no longer exist. If the Department proposes any changes to these rules as a result of this review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to proposing any final action.

Any written comments pertaining to this notice should be directed to Kevin Hamby, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or kevin.hamby@tdhca.state.tx.us.

TRD-200802444
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 12, 2008

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 22, Procedural Rules, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 35576, *Rule Review of Chapter 22, Procedural Rules, Pursuant to Texas Government Code §2001.039*, is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this

review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section in Chapter 22 continue to exist. The commission's Procedural Rules, Texas Administrative Code, Title 16, Part 2, Chapter 22 establish procedures for practice before the Public Utility Commission of Texas. Chapter 22 governs the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to the State Office of Administrative Hearings, whether instituted by order of the commission or by the filing of an application, complaint, petition or any other pleading.

If it is determined during this review that any section of Chapter 22 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding; thus this notice of intention to review Chapter 22 has no effect on the sections as they currently exist.

Comments on the review of Chapter 22 may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed rule review are required to be filed pursuant to §22.71(c) of this title. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 35576.

The notice of intent to review Chapter 22, Procedural Rules, is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (Vernon 2000 and Supp. 2007) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Texas Government Code §2001.039.

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

§22.1. Purpose and Scope.

§22.2. Definitions.

§22.3. Standards of Conduct.

§22.4. Computation of Time.

§22.5. Suspension of Rules and Commission-Prescribed Forms.

SUBCHAPTER B. THE ORGANIZATION OF THE COMMISSION

§22.21. Meetings.

§22.22. Service on the Commission.

SUBCHAPTER C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING

§22.31. Classification in General.

§22.32. Administrative Review.

§22.33. Tariff Filings.

§22.34. Consolidation and Severance.

§22.35. Informal Disposition.

SUBCHAPTER D. NOTICE

§22.51. Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

§22.52. Notice in Licensing Proceedings.

§22.53. Notice of Regional Hearings.

§22.54. Notice To Be Provided by the Commission.

§22.55. Notice in Other Proceedings.

§22.56. Notice of Unclaimed Funds.

SUBCHAPTER E. PLEADINGS AND OTHER DOCUMENTS

§22.71. Filing of Pleadings, Documents and Other Materials.

§22.72. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

§22.73. General Requirements for Applications.

§22.74. Service of Pleadings and Documents.

§22.75. Examination and Correction of Pleadings and Documents.

§22.76. Amended Pleadings.

§22.77. Motions.

§22.78. Responsive Pleadings and Emergency Action.

§22.79. Continuances.

§22.80. Commission Prescribed Forms.

SUBCHAPTER F. PARTIES

§22.101. Representative Appearances.

§22.102. Classification of Parties.

§22.103. Standing to Intervene.

§22.104. Motions to Intervene.

§22.105. Alignment of Parties.

SUBCHAPTER G. PREHEARING PROCEEDINGS

§22.121. Prehearing Conferences.

§22.122. Interim Orders.

§22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.

§22.124. Statements of Position.

§22.125. Interim Rate Relief.

§22.126. Bonded Rates.

§22.127. Certification of an Issue to the Commission.

SUBCHAPTER H. DISCOVERY PROCEDURES

§22.141. Forms and Scope of Discovery.

§22.142. Limitations on Discovery and Protective Orders.

§22.143. Depositions.

§22.144. Requests for Information and Requests for Admission of Facts.

§22.145. Subpoenas.

SUBCHAPTER I. SANCTIONS

§22.161. Sanctions.

SUBCHAPTER J. SUMMARY PROCEEDINGS

§22.181. Dismissal of a Proceeding.

§22.182. Summary Decision.

§22.183. Failure to Attend Hearing and Disposition by Default

SUBCHAPTER K. HEARINGS

§22.201. Place and Nature of Hearings.

§22.202. Presiding Officer.

§22.203. Order of Procedure.

§22.204. Transcript and Record.

§22.205. Briefs.

§22.206. Consideration of Contested Settlements.

§22.207. Referral to State Office of Administrative Hearings.

SUBCHAPTER L. EVIDENCE AND EXHIBITS IN CONTESTED CASES

§22.221. Rules of Evidence in Contested Cases.

§22.222. Official Notice.

§22.223. Witnesses To Be Sworn.

§22.224. Documentary Evidence.

§22.225. Written Testimony and Accompanying Exhibits.

§22.226. Exhibits.

§22.227. Offers of Proof.

§22.228. Stipulation of Facts.

SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

§22.241. Investigations.

§22.242. Complaints.

§22.243. Rate Change Proceedings.

§22.244. Review of Municipal Rate Actions.

§22.246. Administrative Penalties.

§22.251. Review of Electric Reliability Council of Texas (ERCOT) Conduct.

§22.252. Procedures for Approval of ERCOT Fees and Rates.

SUBCHAPTER N. DECISION AND ORDERS

§22.261. Proposals for Decision.

§22.262. Commission Action after a Proposal for Decision.

§22.263. Final Orders.

§22.264. Rehearing.

SUBCHAPTER O. RULEMAKING

§22.281. Initiation of Rulemaking.

§22.282. Notice and Public Participation in Rulemaking Procedures.

§22.283. Emergency Adoption.

§22.284. Informal Information Gathering.

TRD-200802412

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2008

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Adopted Rule Reviews

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts the review of Chapter 17, concerning Campus Planning. The proposed notice of review was published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1607). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding adoption of the review.

This concludes the Board's review of Chapter 17 as required by the Texas Government Code, §2001.039.

TRD-200802420
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: May 8, 2008

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The Texas Higher Education Coordinating Board adopts the review of Chapter 21, concerning Student Services. The proposed notice of review was published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1607). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding adoption of the review.

This concludes the Board's review of Chapter 21 as required by the Texas Government Code, §2001.039.

TRD-200802421
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: May 8, 2008

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The Texas Higher Education Coordinating Board adopts the review of Chapter 22, concerning Grant and Scholarship Programs. The proposed notice of review was published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1607). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding adoption of the review.

This concludes the Board's review of Chapter 22 as required by the Texas Government Code, §2001.039.

TRD-200802422

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: May 8, 2008

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The Texas Higher Education Coordinating Board adopts the review of Chapter 25, concerning Optional Retirement Program. The proposed notice of review was published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1607). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding adoption of the review.

This concludes the Board's review of Chapter 25 as required by the Texas Government Code, §2001.039.

TRD-200802423
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: May 8, 2008

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Texas Board of Nursing

Title 22, Part 11

The Texas Board of Nursing adopts the review of Chapters 213 (Practice and Procedure), 216 (Continuing Education), and 221 (Advanced Practice Nurses) pursuant to Texas Government Code §2001.039. The proposed review was published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2984).

The Board determined that the original reason for adopting these chapters continues to exist.

No comments were received in response to the publication of the proposed rule review.

TRD-200802493
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: May 13, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §140.509(d)(2)

TYPE OF LIMITED CERTIFICATE	CLINICAL INSTRUCTION (# OF CLOCK HOURS)	CLINICAL EXPERIENCE (# OF CLOCK HOURS)
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Chiropractic	60	100
Podiatric	4	50

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Brazos Valley Council of Governments

Request for Proposal for Child Care Management Services

On May 16, 2008 Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Child Care Management Services for the Workforce Solutions Brazos Valley Board Area (Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington Counties). The Board is seeking a single contractor qualified and experienced in providing child care management services. The complete scope of required services and the proposal requirements are contained in the Request for Proposal which may viewed and downloaded at www.bvjobs.org.

A bidder's conference will be held at the office of Workforce Solutions Brazos Valley Board, 3991 East 29th Street, Bryan, Texas, Leon Room on May 28, 2008 from 1:30 to 3:30 p.m. Bidders will have an opportunity to ask questions concerning the RFP and the procurement process. All potential Bidders are highly encouraged to attend.

Due Date: An original and five (5) copies of a written proposal are due to the Board's offices no later than Monday, June 30, 2008 at 2:00 p.m. CST. Faxed or email proposals are not acceptable. Proposals received after the indicated due date and time regardless of delivery method will not be accepted or considered for award.

Proposals may be hand delivered to:

ATTENTION: CHILD CARE MANAGEMENT SERVICES PROPOSAL

c/o Roger D. Dempsey, C.P.M., A.P.P.

Program Manager

Brazos Valley Council of Governments

3991 East 29th St.

Bryan, Texas 77802

Proposals may be mailed to:

ATTENTION: CHILD CARE MANAGEMENT SERVICES PROPOSAL

c/o Roger D. Dempsey, C.P.M., A.P.P.

Program Manager

Brazos Valley Council of Governments

P.O. Drawer 4128

Bryan, Texas 77805

Email address for questions only: rdempsey@bvcog.org

Potential respondents may pose written questions concerning this RFP by email to the RFP contact person listed above. The deadline for questions is May 28, 2008 at 4:00 p.m. CST.

TRD-200802499

Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: May 13, 2008

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Request for Proposal for Workforce Center Operations

On May 16, 2008 Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Workforce Center Operations for Workforce Solutions Brazos Valley Workforce Center System. The Board is seeking a single contractor qualified and experienced in providing workforce center operations. The complete scope of required services and the proposal requirements are contained in the Request for Proposal which may viewed and downloaded at www.bvjobs.org.

A bidder's conference will be held at the office of Workforce Solutions Brazos Valley Board, 3991 East 29th Street, Bryan, Texas, Brazos Room B on May 27, 2008 from 1:30 to 3:30 p.m. Bidders will have an opportunity to ask questions concerning the RFP and the procurement process. All potential Bidders are highly encouraged to attend.

Due Date: An original and five (5) copies of a written proposal are due to the Board's offices no later than Monday, June 30, 2008 at 2:00 p.m. CST. Faxed or email proposals are not acceptable. Proposals received after the indicated due date and time regardless of delivery method will not be accepted or considered for award.

Proposals may be hand delivered to:

ATTENTION: WORKFORCE CENTER OPERATIONS PROPOSAL

c/o Roger D. Dempsey, C.P.M., A.P.P.

Program Manager

Brazos Valley Council of Governments

3991 East 29th St.

Bryan, Texas 77802

Proposals may be mailed to:

ATTENTION: WORKFORCE CENTER OPERATIONS PROPOSAL

c/o Roger D. Dempsey, C.P.M., A.P.P.

Program Manager

Brazos Valley Council of Governments

P.O. Drawer 4128

Bryan, Texas 77805

Email address for questions only: rdempsey@bvcog.org

Potential respondents may pose written questions concerning this RFP by email to the RFP contact person listed above. The deadline for questions is May 27, 2008 at 4:00 p.m. CST.

TRD-200802496

Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: May 13, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 2, 2008, through May 8, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 14, 2008. The public comment period for this project will close at 5:00 p.m. on June 13, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Preserve Sweetwater Partners, LP; Location: The project is located in and adjacent to Sweetwater Lake, east of 8 Mile Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 315840; Northing: 3238719. Project Description: The proposed project was previously evaluated under permit number 24407, and withdrawn on August 23, 2007. The applicant proposes to construct a residential subdivision including single-family housing, town homes, a marina facility, dry dock area, breakwater and utility lines. The proposed project will permanently impact 16.98 acres, and temporarily impact 2.28 acres. A total of 2.01 acres will be dredged for the marina. The applicant proposes to mitigate for these impacts by preserving and enhancing 31.45 acres of wetlands adjacent to Sweetwater Lake, creating 1.84 acres of wetlands in West Galveston Bay, and creating 2.27 acres of wetlands within a proposed stormwater drainage canal. To compensate for impacts to 16.98 acres of jurisdictional wetlands, the applicant proposes to construct approximately 4.11 acres of vegetated wetlands within the Sweetwater Cove Residential Development (includes new marsh behind breakwater) and to preserve a total of approximately 31.45 acres of existing wetlands and 35.37 acres of upland coastal prairie within two proposed mitigation areas. CCC Project No.: 08-0128-F1. Type of Application: U.S.A.C.E. permit application #SWG-2005-00804 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay State Tract (ST) 100, approximately 6 miles east of Baytown, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 320879; Northing: 3276862. Project Description: The applicant proposes to drill ST 100 Well No. 3 and install, operate and maintain a well platform, production platform and a flowline running between the well and the production platform. In addition, the applicant proposes to install a sales pipeline up to 6 inches in diameter from said production platform in a northwesterly direction approximately 1,059 feet to a tie-in point on a permitted well in ST 100 (DA Permit 23237). Up to 1267 cubic yards of material may be placed under the drilling rig (well pad) if necessary. CCC Project No.: 08-0134-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01962 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200802494
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 13, 2008

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403 and Chapter 2156, §2156.121(c), Texas Government Code, and Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP #185b) for the purpose of obtaining Large Capital Value Domestic Equity investment management services for the Board for the Texas Tomorrow Fund Guaranteed Tuition Plan Funds (Texas Tomorrow Fund I). The selected contractor (Contractor) will advise and assist the Board and Comptroller in administering the Board's investment activities related to the Large Capital Value Domestic Equity Mandate for Texas Tomorrow Fund I. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP on behalf of the Board so that the Board may move forward with retaining the necessary Contractor. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, Contractor will be expected to begin performance of the contract on or about September 1, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, May 23, 2008, after 10:00 a.m. Central Zone Time (CZT) and during nor-

mal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CZT on Friday, May 23, 2008.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, May 30, 2008. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, June 6, 2008, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CZT), on Thursday, June 12, 2008. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board and Comptroller will make the final decision. The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP--May 23, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due--May 30, 2008, 2:00 p.m. CZT; Official Responses to Questions posted--June 6, 2008; Proposals Due--June 12, 2008, 2:00 p.m. CZT; Contract Execution--September 1, 2008, or as soon thereafter as practical; Commencement of Services--September 1, 2008.

TRD-200802504
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 14, 2008

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/19/08 - 05/25/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/19/08 - 05/25/08 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200802485
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 13, 2008

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Texas Council for Developmental Disabilities

Public Comments on Five Year State Plan Amendments

The Texas Council for Developmental Disabilities (TCDD) plans to amend its Five Year State Plan by adding 18 new objectives, deleting one objective, and extending the completion dates for two objectives. TCDD invites interested individuals and organizations to comment on the proposed amendments before the Council makes its final decision.

The TCDD State Plan was originally developed in August of 2006 and describes the Goals and Objectives TCDD expects to initiate or continue through September 30, 2011. These proposed amendments will allow TCDD to address newly recognized needs and to further focus its work in certain areas. The proposed new objectives reflect activities the Council plans to implement; "next steps" for activities that have been completed; staff public policy activities; and the Council's commitment to understand and meet the needs of groups of people who are typically un-served, under-served, or under-represented.

Comments are due by July 11, 2008. Comments will be considered by the Council during its August meeting when finalizing amendments to be submitted to the federal Administration on Developmental Disabilities. The TCDD FY2007-2011 State Plan, with proposed amendments, is available on the TCDD website at: **www.txddc.state.tx.us.** Comments may be submitted on the form provided, or by email to **Joanna.Cordry@tcdd.state.tx.us.**

TRD-200802472
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: May 12, 2008

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Texas Education Agency

Request for Applications Concerning Early College High School, Cycle 3, Middle School Expansion Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-117, Early College High School (ECHS), Cycle 3, Middle School Expansion Grant, from Texas school districts, open-enrollment charter schools, and institutions of higher education (IHEs) to either open a new ECHS or expand an existing ECHS to serve middle school students no later than August 2009. Grant funds for this program shall be used for two purposes: planning and implementation. Applicants will budget for both phases in the application.

Eligibility Criteria. To be eligible for an ECHS Middle School Expansion Grant, applicants must agree to develop the ECHS in accordance with the following requirements. An ECHS shall (1) be a collaborative partnership between a school district or an open-enrollment charter school and an IHE; (2) provide a course of study for Grades 9-12 that enables a participating student to receive a high school diploma and either an associate's degree or 60 semester hours toward a baccalaureate degree; (3) target and enroll a majority of students who are at risk of dropping out of school (at-risk, economically disadvantaged, English-language learners, and first-generation college-goers); and (4) be an autonomous high school that is (a) located on a college or uni-

versity campus, (b) a stand-alone high school campus near a college or university campus, or (c) a small learning community within a larger high school that is near a college or university campus where the ECHS is physically separated from the larger high school and ECHS students are a separate cohort with their own teachers, leader, schedule, and curriculum plan.

An eligible applicant shall demonstrate how it will meet all of the requirements of this RFA for opening an ECHS no later than the beginning of the 2009-2010 school year.

A campus that fails to meet one or more of the campus eligibility requirements by the end of the planning phase (i.e., no later than July 31, 2009) will not receive implementation funding under this grant program.

Description. The purpose of the ECHS grant is to create collaborative partnerships between school districts or open-enrollment charter schools and institutions of higher education to open small high schools that provide students at risk of dropping out of school, including traditionally underserved students, an opportunity to earn a high school diploma and either an associate's degree or 60 semester hours toward a baccalaureate degree at no cost to the student.

ECHSs are autonomous, small schools designed to create a seamless transition between high school and college. Each ECHS must serve Grades 9-12 and some portion of the Grades 6-8 middle school population. An ECHS provides for a course of study that enables a participating student to receive both a high school diploma and either an associate's degree or 60 semester hours toward a baccalaureate degree. In order to accomplish the goals of the program, the school district or charter school and its IHE partner are required to create a memorandum of understanding that addresses certain issues as specified in the RFA. The ECHS will provide potential savings for families and taxpayers. Students graduating from an ECHS will be prepared for post-secondary and work success.

A Texas school district or open-enrollment charter school will collaborate with its IHE partner to plan during the 2008-2009 school year and will open an ECHS no later than August 2009.

Previously established ECHSs that are awarded this grant will be expected to implement programs and activities that expand existing programs. This grant is intended to supplement (increase the level of services) not supplant (replace) funds from federal, state, or local sources for existing programs.

Dates of Project. Applicants should plan for a starting date of no earlier than December 1, 2008, and an ending date of no later than May 31, 2011. The planning phase extends from December 1, 2008, to July 31, 2009. The implementation phase extends from August 1, 2009, to May 31, 2011.

Project Amount. Funding will be provided for approximately 5-10 new ECHSs and approximately 10-15 existing ECHSs. A total of $5,175,000 in project funds is available to be awarded. Project funding in subsequent project periods will be based on satisfactory progress of the first-period objectives and activities and on general budget approval by the commissioner of education and the state legislature.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Special consideration or priority will be given to applicants that establish ECHSs operating full-day on a college campus or to applicants located in education service center regions where no ECHSs are currently located (regions 3, 5, 8, 9, 11, 14, 15, 16, and 18) that open an ECHS on a college campus. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-08-117 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://www.tea.state.tx.us/opge/disc/index.html. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, July 10, 2008, to be eligible to be considered for funding.

TRD-200802510
Cristina De La Fuente-Valadez
Director, Policy Coordination Division
Texas Education Agency
Filed: May 14, 2008

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 23, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a

comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 23, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Alvin Chemical, Inc.; DOCKET NUMBER: 2008-0311-AIR-E; IDENTIFIER: RN100914613; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: liquid chemical drumming, blending, and transloading; RULE VIOLATED: 30 Texas Administrative Code (TAC) §106.472 (formerly Standard Exemption 51) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with conditions specified in the Standard Exemption 51 registration; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: AMC Facilities, LP; DOCKET NUMBER: 2008-0309-MWD-E; IDENTIFIER: RN101515773; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012238001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of treatment and control are properly operated and maintained; 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; 30 TAC §317.7(e), by failing to secure the wastewater treatment plant; and 30 TAC §21.4(e) and the Code, §5.702, by failing to pay outstanding consolidated water quality fees and associated late fees; PENALTY: $4,770; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Carotex, Inc.; DOCKET NUMBER: 2007-2019-IWD-E; IDENTIFIER: RN100213727; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0001674000, Other Requirements Number 5, by failing to maintain operating logs in accordance with its permit; 30 TAC §305.125(9) and TPDES Permit Number WQ0001674000, Monitoring and Reporting Requirements Number 7.c., by failing to report effluent exceedances that deviate by more than 40% from the permitted effluent limitation; 30 TAC §305.125(5) and TPDES Permit Number WQ0001674000, Operational Requirements Number 1, by failing to properly ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1), TPDES Permit Number WQ0001674000, Permit Conditions Number 2.g., and the Code, §26.121(a)(1), by failing to prevent unauthorized discharges of industrial wastes; 30 TAC §319.1 and TPDES Permit Number WQ0001674000, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(9), TPDES Permit Number WQ0001674000, Monitoring and Reporting Requirement Number 7.a., and the Code, §26.039(b), by failing to submit the noncompliance notification for unauthorized discharges; PENALTY: $9,800; Supplemental Environmental Project (SEP) offset amount of $3,920 applied to Jefferson County-Pleasure Island Stabilization; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Carr Land Development LLC; DOCKET NUMBER: 2008-0108-WR-E; IDENTIFIER: RN104949680; LOCATION: Mineola, Wood County, Texas; TYPE OF FACILITY: property that includes a refurbished reservoir; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.143, by failing to obtain a water right permit for the impoundment of waters in the state; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: City of Crowell; DOCKET NUMBER: 2008-0116-MWD-E; IDENTIFIER: RN101612380; LOCATION: Crowell, Foard County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10638001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for five-day biochemical oxygen demand, total suspended solids, and total chlorine residual; and 30 TAC §305.125(17) and TPDES Permit Number 10638001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2007-1733-AIR-E; IDENTIFIER: RN104960158; LOCATION: Crane County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report an emission event within 24 hours after discovery; and 30 TAC §116.115(b)(2)(F) and §122.143(4), Standard Permit Number 79063, Federal Operating Permit (FOP) Number 0-2913, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: $72,600; SEP offset amount of $36,300 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-up; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(7) COMPANY: City of Glen Rose; DOCKET NUMBER: 2007-1933-WQ-E; IDENTIFIER: RN101918431; LOCATION: Somervell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10177001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for total ammonia nitrogen; PENALTY: $1,990; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Kiker's Machine Works, Inc.; DOCKET NUMBER: 2008-0341-WQ-E; IDENTIFIER: RN105362081; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: fabricated wire products; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain a storm water

discharge permit; PENALTY: $2,100; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(9) COMPANY: Mario Hernandez dba KK Busters Plumbing; DOCKET NUMBER: 2008-0263-MLM-E; IDENTIFIER: RN103162673; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.143, by failing to deposit waste at a facility authorized to receive it; 30 TAC §312.142(e), by failing to submit a new registration application; 30 TAC §312.146 and the Code, §26.039(b), by failing to report discharges or spills to the TCEQ no later than 24 hours after the occurrence; and 30 TAC §330.15(c), by failing to prevent the unauthorized discharge of pollutants including grease trap waste onto the ground at the site; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Longhorn Glass Manufacturing, L.P.; DOCKET NUMBER: 2007-2024-AIR-E; IDENTIFIER: RN100671445; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: glass manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(B), and 122.146(2), FOP O-02641, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to timely submit a semi-annual deviation report and a permit compliance certification; 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 42623, Special Condition (SC) 4, FOP O-02641, Special Terms and Conditions (STC) 7, and THSC, §382.085(b), by failing to maintain the monitored opacity of the glass furnace stack at less than 18.7%; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 42623, SC 1, FOP O-02641, STC 7, and THSC, §382.085(b), by failing to comply with the maximum allowable emission rate for hydrochloric acid; and 30 TAC §122.143(4) and §122.145(2)(A), FOP O-02641, GTC, and THSC, §382.085(b), by failing to report all deviations in semi-annual deviation reports; PENALTY: $46,860; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Medina County Water Control and Improvement District Number 2; DOCKET NUMBER: 2008-0410-MWD-E; IDENTIFIER: RN101919801; LOCATION: D'Hanis, Medina County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011144001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for ammonia-nitrogen; and 30 TAC §305.125(17) and TPDES Permit Number WQ0011144001, Sludge Reporting Requirements, by failing to timely submit the annual sludge report; PENALTY: $1,265; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: River City Waste, Inc.; DOCKET NUMBER: 2008-0146-MLM-E; IDENTIFIER: RN104662135; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) transfer station; RULE VIOLATED: 30 TAC §330.9(a), by failing to receive authorization before operating an MSW transfer station; and 30 TAC §111.201 and §330.15(c) and THSC, §382.085(b), by failing to comply with the prohibition on outdoor burning; PENALTY: $9,420; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-0735; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Southern Star Concrete, Inc.; DOCKET NUMBER: 2008-0239-AIR-E; IDENTIFIER: RN101970465; LOCATION: Frisco, Collin County, Texas; TYPE OF FACILITY: concrete batching operation; RULE VIOLATED: 30 TAC §106.4(c) and THSC, §382.085(b), by failing to maintain the central baghouse for the cement silo and batching operation in good working order and operating properly during plant operation; and 30 TAC §101.201(a) and THSC, §382.085(b), by failing to report an emission event; PENALTY: $1,045; SEP offset amount of $418 applied to City of Fort Worth-"Mow Down Air Pollution" lawn mower exchange event; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Tennessee Gas Pipeline Company; DOCKET NUMBER: 2008-0401-AIR-E; IDENTIFIER: RN100221878; LOCATION: Jasper County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 56321, SC 1 and 2, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; PENALTY: $2,050; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Tyler County; DOCKET NUMBER: 2007-1355-MSW-E; IDENTIFIER: RN101999969; LOCATION: Woodville, Tyler County, Texas; TYPE OF FACILITY: waste transfer station; RULE VIOLATED: 30 TAC §330.121(a), Site Development Plant Sections (C)(ii), (C)(iv)(c), and (J), and Site Operating Plan Section (iii)(a)(4), by failing to comply with the approved Site Development Plan and Site Operating Plans (SOP); 30 TAC §330.125(a), by failing to maintain a copy of the registration and associated documents at the MSW facility; 30 TAC §330.221(c), by failing to comply with fire protection requirements; and 30 TAC §330.201(b), by failing to apply for a modification to the SOP to incorporate the 2006 rule revisions by the required deadline; PENALTY: $17,480; SEP offset amount of $13,984 applied to RC&D - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200802492
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 13, 2008

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Notice of District Petition

Notices issued May 8, 2008 through May 9, 2008.

Texas Commission on Environmental Quality (TCEQ) Internal Control No. 04022008-D03; Canyon Falls Land Partners, L.P. and McGinnis Land Partners I, L.P., (Petitioners) filed a petition for creation of Canyon Falls Water Control and Improvement District No. 2 of Denton County (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land, consisting of two tracts, to be included in the proposed District; (2) there is one lien holder, American Bank of Texas, on the property to be included in the proposed District; (3) the proposed District will contain approximately 443.966 acres located in Denton County, Texas; and (4) the proposed District is within the corporate boundaries

of the Town of Northlake, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $37,000,000.

TCEQ Internal Control No. 12052007-D03; Alamo/ProTerra Joint Venture (the "Petitioner") filed a petition for creation of Fort Bend County Municipal Utility District No. 195 (the "District") with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) there is no lien holder on the property to be included in the proposed District; and (3) the proposed District will contain approximately an area of 487.79 acres located within Fort Bend County, Texas. The engineering report states the proposed District is not within the corporate boundaries of any city or within the extraterritorial jurisdiction of any city, town or village in Texas. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $63,000,000.

TCEQ Internal Control No. 02122008-D03; 830 Investors, Ltd, Jim/Judy Management, L.L.C., general partner, James R. Holcomb, Sole Manager, (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 127 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 403.01 acres located within Montgomery County, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $65,740,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200802506
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 14, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 23, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 23, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Alan Karl dba Coles Crossing; DOCKET NUMBER: 2007-0475-PWS-E; TCEQ ID NUMBER: RN102952033; LOCATION: 4621 Texana, near Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the Maximum Contaminant Level of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on a running annual average during the second, third,

and fourth quarters of 2005 and the first, second, third, and fourth quarters of 2006, when he reported TTHM levels of 0.166 mg/L, 0.191 mg/L, 0.203 mg/L, 0.198 mg/L, 0.166 mg/L, 0.172 mg/L, and 0.168 mg/L respectively; PENALTY: $800; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2006-1578-AIR-E; TCEQ ID NUMBER: RN100216977; LOCATION: 2700 Highway 366, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), and Air Operating Permit Number O-01877, General Terms and Conditions, by failing to prevent unauthorized emissions; 30 TAC §§122.145(2)(A), 122.146(2) and (5)(c), and 122.143(4), THSC, §382.085(b), and Air Operating Permit Number O-01877, General Terms and Conditions, by failing to submit annual compliance certifications within 30 days after the end of the March 1, 2004 - February 28, 2005 and March 1, 2005 - February 28, 2006 certification periods and by failing to report all deviations on the annual compliance certification report; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), Air Operating Permit Number O-01877, General Terms and Conditions, and New Source Review (NSR) Permit Numbers 36644, PSD-TX-903, N-007, by failing to operate the gas turbine and duct burner (Emission Point Number (EPN) N-20A) in Co-generation Unit 1 within emissions limits of 15.3 pounds per hour (lbs/hr) and 6 parts per million (ppm) of nitrogen oxides (NOx), 53.9 lbs/hr and 50 ppm of carbon monoxide (CO), and 7.61 lbs/hr and 7 ppm of ammonia (NH3); 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), Air Operating Permit Number O-01877, General Terms and Conditions, and NSR Permit Numbers 36644, PSD-TX-903, N-007, Special Conditions 1, 16A, and 16B, by failing to operate the gas turbine and duct burner (EPN N-20B) in Co-generation Unit 2 within emissions limits of 24.1 lbs/hr and 9 ppm of NOx and 7.61 lbs/hr and 7 ppm of NH3; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), Air Operating Permit Number O-01877, General Terms and Conditions, and NSR Permit Numbers 36644, PSD-TX-903, N-007, Special Conditions 1 and 21, by failing to operate the Auxiliary Boiler B-7240, EPN N-14, within emissions limits of 13.6 lbs/hr and 20.1 tons per year (tpy) and firing rate limits of 0.06 lbs/million British thermal units (MMBtu)/hr of NOx, emissions limits of 15.6 lbs/hr and firing rate limits of 0.069 lbs/MMBtu/hr of CO, and 2.35 tpy of volatile organic compounds; and 30 TAC §101.5 and THSC, §382.085(b), by failing to prevent uncombined water in the form of steam vapor from Ethylene Cooling Tower from impairing visibility on adjacent public roads; PENALTY: $203,125; Supplemental Environmental Project offset amount of $101,562 applied to Southeast Texas Regional Planning Commission West Port Arthur Home Energy Efficiency Project; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Henrietta; DOCKET NUMBER: 2007-1625-MWD-E; TCEQ ID NUMBER: RN101701795; LOCATION: approximately one mile northeast of the intersection of United States Highway 287 and State Highway Loop 510, Henrietta, Clay County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121, and Texas Pollutant Discharge Elimination System Permit Number WQ0010454002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permit limits in October and November 2006; PENALTY: $18,700; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Everett Custom Homes, L.L.C.; DOCKET NUMBER: 2007-0356-WQ-E; TCEQ ID NUMBER: RN105006621; LOCATION: east of Farm-to-Market (FM) Road 1140 about 0.75 mile southeast from Lawrence Drive, Heath, Rockwall County, Texas; TYPE OF FACILITY: construction site at a single family housing development; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities as documented on June 19, 2006 and February 13, 2007; PENALTY: $1,050; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Jochum Schievink dba Jochum Schievink Dairy; DOCKET NUMBER: 2007-1459-AGR-E; TCEQ ID NUMBER: RN102754892; LOCATION: east side of County Road 285 approximately two miles south of the intersection of County Road 285 and FM Road 219, approximately ten miles southeast of Dublin, Erath County, Texas; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: 30 TAC §321.31(a) and TWC, §26.121(a), by failing to prevent the unauthorized discharge of agricultural wastewater from a CAFO; 30 TAC §321.44(a) and General Permit Number TXG920211, Part IV B.5., by failing to orally notify the executive director and appropriate regional office within 24 hours of a discharge from a CAFO; and 30 TAC §321.44(b) and General Permit Number TXG920211, Part III A.5.(c), by failing to timely sample and analyze an unauthorized discharge; PENALTY: $2,550; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: New Way Enterprise Inc. dba Time Out Food Mart #2; DOCKET NUMBER: 2006-1537-PST-E; TCEQ ID NUMBER: RN101892982; LOCATION: 1000 North Velasco Street, Angelton, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; PENALTY: $6,200; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Opel Business, Inc. dba Garth Road Cleaners aka Garth Road 1.69 Cleaners and dba 1.69 City Cleaners; DOCKET NUMBER: 2006-1365-DCL-E; TCEQ ID NUMBERS: RN104621503 and RN104104336; LOCATIONS: 3413 Garth Road, Suite B (Garth facility) and 1601 North Alexander Drive, Suite B (Alexander facility), Baytown, Harris County, Texas; TYPE OF FACILITIES: dry cleaning facility and dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility for the Garth facility; 30 TAC §337.14(c) and TWC, §5.702, by failing to pay dry cleaner registration fees for Account Number 24002250; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Alexander facility's registration by completing and submitting the required registration form to the TCEQ

for a dry cleaning and/or drop station facility; PENALTY: $2,370; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(8) COMPANY: U.S. Oil Recovery, L.P.; DOCKET NUMBER: 2007-0857-IHW-E; TCEQ ID NUMBER: RN100604677; LOCATION: 400 North Richey Street, Pasadena, Harris County, Texas; TYPE OF FACILITY: centralized waste treatment facility; RULES VIOLATED: 30 TAC §335.4(1), by failing to prevent unauthorized discharges resulting in site contamination requiring remediation; PENALTY: $6,700 STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200802490
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 13, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 23, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 23, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Arturo Maldonado dba Truck Town Body & Paint; DOCKET NUMBER: 2006-1602-AIR-E; TCEQ ID NUMBER: RN102292943; LOCATION: 6919 Alameda Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: auto body shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization from the TCEQ, prior to operating a surface coating operation; PENALTY: $3,150; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Beverly Breaux; DOCKET NUMBER: 2007-1125-PST-E; TCEQ ID NUMBER: RN101752053; LOCATION: 893 Highway 183, Cuero, Dewitt County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $10,500; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: David Fenoglio dba Sunset Water System; DOCKET NUMBER: 2007-1711-PWS-E; TCEQ ID NUMBER: RN102693579; LOCATION: corner of West Front Street and Cottage Grove Avenue, near railroad tracks, 11243 Highway 59 North, Montague, Montague County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and TCEQ Order Docket Number 2003-0038-PWS-E, Ordering Provision 3.e., by failing to keep on file and make available for commission review, records of annual tank inspections; 30 TAC §290.46(n)(3) and TCEQ Order Docket Number 2003-0038-PWS-E, Ordering Provision 3.f., by failing to keep on file and make available for commission review, copies of well completion data records; 30 TAC §290.45(b)(1)(C)(ii), THSC, §341.0815(c), and TCEQ Order Docket Number 2003-0038-PWS-E, Ordering Provision 5.b., by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.43(c)(2), by failing to provide 30-inch access openings on the three ground storage tanks; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the pressure tanks that are provided with an inspection port at least once every five years; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.46(u) and TCEQ Order Docket Number 2003-0038-PWS-E, Ordering Provision 5.c., by failing to plug Well Number 2 and Number 3 or to submit test results proving that the wells are in a non-deteriorated condition; PENALTY: $10,210; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Don Strong; DOCKET NUMBER: 2007-1274-PST-E; TCEQ ID NUMBER: RN101663235; LOCATION: 1300 West Highway 21, Caldwell, Burleson County, Texas; TYPE OF FACILITY: property that had three USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.54(b), by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured in a manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $7,875; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: George Zambrano dba Zambrano Roofing and Sheet Metal Co.; DOCKET NUMBER: 2006-2241-MSW-E; TCEQ ID NUMBER: RN105093363; LOCATION: 538 County Road 440, near Alice, Jim Wells County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to properly dispose of MSW at an authorized facility; PENALTY: $5,000; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Leonard Morris dba Western Stone; DOCKET NUMBER: 2007-1196-WQ-E; TCEQ ID NUMBER: RN105226146; LOCATION: 1701 Turkey Creek Road, Mineral Wells, Palo Pinto County, Texas; TYPE OF FACILITY: stone quarry; RULES VIOLATED: 30 TAC §311.74(a), by failing to obtain authorization to discharge storm water associated with quarry activities to water in the state located in a water quality protection area in the John Graves Scenic Riverway; PENALTY: $5,000; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Pasadena Investment Group Corporation; DOCKET NUMBER: 2007-1822-PST-E; TCEQ ID NUMBER: RN101876928; LOCATION: 4508 Proctor Street, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change; and 30 TAC §334.51(a)(1), by failing to ensure that releases of regulated substances from the USTs due to spills and overfills do not occur; PENALTY: $24,500; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Ray Lawton and Shuran Lawton; DOCKET NUMBER: 2007-0790-PST-E; TCEQ ID NUMBER: RN105072912; LOCATION: Farm-to-Market 729, Jefferson, Marion County, Texas; TYPE OF FACILITY: facility with three USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(a)(1), by failing to register with the commission, on authorized agency forms, USTs in existence on or after September 1, 1987; PENALTY: $8,925; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Sharon Skinner; DOCKET NUMBER: 2007-0541-PST-E; TCEQ ID NUMBER: RN101568210; LOCATION: 33 County Road 190, Gainesville, Cooke County, Texas; TYPE OF FACILITY: vacant lot that was formerly operated as a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirement and by failing to assure the vent lines were kept open and functioning and all other piping, pumps, manways, and ancillary equipment had been capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to amend the registration for any change or additional information regarding the USTs within 30 days from the date of occurrence of the change; PENALTY: $8,925; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Tim Judd and Shelley Judd; DOCKET NUMBER: 2007-1725-PST-E; TCEQ ID NUMBER: RN101804086; LOCATION: 311 Union Avenue, Rule, Haskell County, Texas; TYPE OF FACILITY: fuel storage facility; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0011639U for Fiscal Years 1999-2007; PENALTY: $9,000; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Tom Jordan dba T Jordan Conoco; DOCKET NUMBER: 2007-1250-PST-E; TCEQ ID NUMBER: RN100701119; LOCATION: 5317 Mansfield Highway, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with the retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(1)(C) and (3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board executive order, and free of defects that would impair the effectiveness of the system and by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.246(3) and (5) and THSC, §382.085(b), by failing to maintain Stage II records on-site and make them available for inspection upon request by commission personnel; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee receives in-house Stage II training regarding the purpose and operation of the vapor recovery system; PENALTY: $4,280; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Triple A Dump Truck Service, L.L.C.; DOCKET NUMBER: 2006-0076-MSW-E; TCEQ ID NUMBER: RN104566120; LOCATION: 4 1/2 miles north on Western Road, Hidalgo County, Texas; TYPE OF FACILITY: dump truck and solid waste transport service; RULES VIOLATED: 30 TAC §330.15(c) and §330.103(b), by failing to prevent the unauthorized disposal of MSW; PENALTY: $4,200; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200802491
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 13, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 11

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed amendments to 30 TAC Chapter 11, Contracts.

The proposed rulemaking would reflect the implementation of House Bill 3560, 80th Legislature, Regular Session, 2007. The proposed rulemaking relates to the transfer of Historically Underutilized Business program responsibilities from the Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. In addition, this proposed rulemaking reflects the transfer of authority for bid opening and tabulation from Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services.

A public hearing on this proposal will be held in Austin on June 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services, at (512) 239-2548. Requests should be made as far in advance as possible.

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-009-011-AS. The comment period closes June 23, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Wendy Cox or Joe McGill, Administrative Support Services Division, (512) 239-1813.

TRD-200802435
Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Filed: May 9, 2008

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Notice of Request for Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft total maximum daily load (TMDL) for bacteria in the Lower San Antonio River (Segment 1901) of the San Antonio River Basin, located in Karnes, Goliad, Refugio, Dewitt, Wilson, Victoria, and Guadalupe Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in the Lower San Antonio River (Segment 1901). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on **May 28, 2008, 7:00 p.m., at the Parish Hall at the Immaculate Conception Catholic Church, 207 North Commercial, Goliad, Texas 77963**. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Kerry Niemann, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., June 21, 2008**, and should reference, *One Total Maximum Daily Load for Bacteria in the Lower San Antonio River, For Segment Number 1901*. For further information regarding the draft TMDL, please contact Kerry Niemann, Water Programs Division, at (512) 239-0483 or *kniemann@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html* or by calling Diana Washington at (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact Diana Washington at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200802486
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 13, 2008

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Notice of Request for Public Comment and Notice of Public Meetings for Six Total Maximum Daily Loads

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment six draft total maximum daily loads (TMDLs) for bacteria in waters of the Upper Gulf Coast (Segments 2421, 2422, 2423, 2424, 2432, and 2439) in the Galveston Bay System, located in Brazoria, Galveston, Chambers, and Harris Counties. The TCEQ will conduct two public meetings to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant load concentrations in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct two public meetings on the draft TMDLs for bacteria in waters of the Upper Gulf Coast (Segments 2421, 2422, 2423, 2424, 2432, and 2439). The purpose of these public meetings is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comment on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site. The TMDLs will then be submitted to EPA Region 6 for approval. Upon approval, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

The first public comment meeting will be held on June 9, 2008, 7:00 p.m., at the Clear Lake Park Meeting Room, 5001 NASA Road 1, Clear Lake, Texas 77586. The second public meeting will be held on June 11, 2008, 2:00 p.m. at White Memorial Park, Whites Park Exhibit Hall, 225 Whites Memorial Drive, Hankamer, Texas 77560. At these meetings individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of each meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Casey Johnson, Texas Commission on Environmental Quality, Water Programs Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., June 21, 2008, and should reference, *Six Total Maximum Daily Loads for Bacteria in Waters of the Upper Gulf Coast, For Segment Numbers 2421, 2422, 2423, 2424, 2432, and 2439*. For further information regarding the draft TMDLs, please contact Casey Johnson, Water Programs Division, at (512) 239-1505 or *casjohns@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.htm* or by calling Diana Washington (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact Diana Washington at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200802489
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 13, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of May 1, 2008 through May 8, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BASF CORPORATION which operates an anhydrous ammonia storage terminal, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002656000, which authorizes a discharge of storm water, hydrostatic test water, fire protection water and storm water from construction activities on an intermittent and flow variable basis via Outfall 001. The facility is located east of Farm-to-Market Road 1495 and approximately 1000 feet south of the intersection of FM Road 1495 and State Highway 288 in the City of Freeport, Brazoria County, Texas.

EVANGELISTIC TEMPLE has applied for a renewal of TPDES Permit No. WQ0011878001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located approximately 2400 feet north-northwest of the intersection of U.S. Highway 59 and McClellan Road and 250 feet west of McClellan Road in Montgomery County, Texas.

PRAXAIR INC which operates the Praxair Deer Park Plant, has applied for a renewal of TPDES Permit No. WQ0001173000, which authorizes the discharge of cooling tower blowdown, boiler blowdown, treated domestic wastewater, process wastewater (compressor condensate), process area washwater and storm water, and previously monitored effluents (PMEs) at a daily average flow not to exceed 430,000 gallons per day via Outfall 001.

PRAXAIR INC which operates Praxair Port Arthur Hydrogen Facility, has applied for a renewal of TPDES Permit No. WQ0004605000, which authorizes the discharge of process wastewater, contaminated non-process wastewater, and steam condensate at a daily average flow not to exceed 133,000 gallons per day via Outfall 001. The facility is located at 2555 Savannah Avenue, within the boundaries of the Motiva Port Arthur Refinery, in the City of Port Arthur, in Jefferson County, Texas.

SYNAGRO OF TEXAS CDR INC has applied for a minor amendment to Texas Commission on Environmental Quality (TCEQ) permit No. WQ0004590000 to reduce the sludge application rate from 12 dry tons per acre per year to 10.02 dry tons per acre per year on Field 1, 5.93 dry tons per acre per year on Field 2, 5.31 dry tons per acre per year on Field 3, 4.46 dry tons per acre per year on Field 4, and 2.26 dry tons per acre per year on Field 5. The facility is located approximately 1 1/2 miles northeast of Rock Island, Texas, on Highway Alternate 90 and County Road 118 South in Colorado County, Texas.

VOLENTE GROUP PROPERTIES INC has applied for a new permit, Proposed Permit No. WQ0014798001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 46,000 gallons per day via a subsurface area drip dispersal system on 10.39 acres of non-public access land. The wastewater treatment facility and disposal site are located 2,100 feet east-southeast of the intersection of Reed Park Road and Farm-to-Market Road 1431 that is closest to Jonestown in Travis County, Texas. The wastewater treatment facility and disposal site are located in the drainage basin of Lake Travis in Segment No. 1404 of the Colorado River Basin.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ

can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200802505
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 14, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on May 1, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Advantage Asphalt Products, Ltd.; SOAH Docket No. 582-07-2484; TCEQ Docket No. 2006-1434-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Advantage Asphalt Products, Ltd. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200802507
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 14, 2008

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Texas Facilities Commission

Request for Offers #303-8-11679

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of a Request for Offers (RFO) #303-8-11679 to solicit Offers to sell qualified parcels of land to DPS, located Hidalgo County, Texas. The site should contain a minimum of 19 acres of land or 827,640 square feet of contiguous land; however, 25 acres is the preferred size. Sites greater than 25 acres will be considered.

The deadline for questions is May 30, 2008; and the deadline for offers is June 6, 2008 at 3:00 p.m. The award date is to be determined. TFC reserves the right to accept or reject any or all offers submitted. TFC is under no legal or other obligation to issue an award on the basis of this notice or the distribution of an RFO. Neither this notice nor the RFO commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting an offer may obtain information by contacting Richard Ehlert at (512) 463-0209 or Richard.Ehlert@tfc.state.tx.us. A copy of the RFO may be downloaded from the Electronic State Business Daily at: *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76579*.

TRD-200802511
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 14, 2008

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Request for Proposals #303-8-11642

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-8-11642. TFC seeks a 5 or 10 year lease of approximately 3,785 square feet of office space in Georgetown, Williamson County, Texas.

The deadline for questions is May 30, 2008 and the deadline for proposals is June 6, 2008 at 3:00 p.m. The award date is July 16, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76511*.

TRD-200802459
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 12, 2008

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Request for Proposals #303-8-11695

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-8-11695. TFC seeks a 5 or 10 year lease of approximately 12,000 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is June 2, 2008 and the deadline for proposals is June 13, 2008 at 3:00 p.m. The award date is July 16, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76535*.

TRD-200802495
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 13, 2008

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Texas Health and Human Services Commission

Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts the following per day payment rates for the state-owned veterans nursing facilities for fiscal year (FY) 2008 effective September 1, 2007: Big Spring, $133.00; Bonham, $133.00; Floresville, $133.00; Temple, $133.00; McAllen, $133.00; El Paso, $133.00; and Amarillo, $133.00.

HHSC conducted a public hearing to receive public comment on the proposed payment rates for state-owned veterans homes in the nursing facility program operated by the Texas Department of Aging and Disability Services. There were no comments received during this hearing. The hearing was held in compliance with 1 Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on May 6, 2008, at 9:00 a.m. in the Permian Basin Conference Room of Building H, Braker Center, at 11209 Metric Boulevard, Austin, Texas 78758-4021.

Methodology and Justification. The adopted rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311.

TRD-200802484
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 13, 2008

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Andrews	Waste Control Specialists LLC	L06153	Andrews	00	04/22/08
Katy	Interventional Cardiology Associates PA	L06156	Katy	00	04/18/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Solutia Inc.	L00219	Alvin	80	04/18/08
Austin	ARA Imaging	L05862	Austin	30	04/29/08
Austin	Austin Radiological Association	L00545	Austin	144	04/29/08
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	78	04/29/08
Austin	Thermo Finnigan LLC	L01186	Austin	44	05/01/08
Austin	Consolidated Technologies Inc.	L02045	Austin	24	05/01/08
Austin	ARA Imaging	L05862	Austin	29	04/16/08
Austin	Austin Radiological Association	L00545	Austin	142	04/16/08
Austin	Austin Radiological Association	L00545	Austin	143	04/24/08
Austin	Daughters of Charity Health Services of Austin DBA University Medical Center at Brackenridge	L00268	Austin	99	04/18/08
Austin	Daughters of Charity Health Services of Austin DBA Seton Medical Center Austin	L02896	Austin	97	04/18/08
Bay City	Equistar Chemicals LP Matagorda Plant	L03938	Bay City	23	04/16/08
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	17	04/24/08
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	14	04/21/08
Carrollton	Trinity MC LLC DBA Trinity Medical Center	L03765	Carrollton	56	04/16/08
Carthage	East Texas Medical Center Carthage	L02540	Carthage	35	04/30/08
Cedar Park	Cedar Park Health System LP DBA Cedar Park Regional Medical Center	L06140	Cedar Park	01	04/28/08
College Station	Cancer Physicians Associated PA	L05790	College Station	07	04/25/08
Corpus Christi	N-Spec Quality Services Inc	L05113	Corpus Christi	31	04/29/08
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	23	04/16/08
Dallas	Landmark Radiation Dallas LP	L06075	Dallas	06	04/24/08
Dallas	Texas Oncology PA DBA Sammons Cancer Center	L04878	Dallas	39	04/24/08
Dallas	Metrocrest Hospital Authority DBA RHD Memorial Medical Center	L02314	Dallas	58	04/16/08
Eagle Lake	Rice District Community Hospital DBA Rice Medical Center	L03408	Eagle Lake	16	05/01/08
Fannin	Coleto Creek Power LP DBA Coleto Creek Power Station	L02519	Fannin	21	04/29/08
Grapevine	Cardiovascular Consultants of North Texas LLP	L04627	Grapevine	19	04/29/08
Houston	Cardiology Consultants of Houston	L05046	Houston	08	04/30/08
Houston	TOPS Specialty Hospital LTD DBA TOPS Surgical Specialty Hospital	L05441	Houston	13	04/29/08
Houston	American Diagnostic Tech LLC	L05514	Houston	46	04/24/08
Houston	Texas Southern University	L03121	Houston	26	04/24/08
Houston	E+PET Imaging LP DBA PET Imaging of Houston	L05620	Houston	07	04/24/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	135	04/22/08
Houston	Advanced Cardiac Care Association	L04936	Houston	18	04/22/08
Houston	New Medical Horizons II LTD. DBA Cypress Fairbanks Medical Center	L03424	Houston	33	04/23/08
Houston	Houston Cyclotron Partners LP DBA Cyclotope	L05585	Houston	13	04/21/08
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	134	04/16/08
Houston	Southwest Heart Center	L05637	Houston	02	04/16/08
Kingwood	Houston Physicians Medical Association PLLC DBA H. P. PET/CT Center	L05901	Kingwood	05	04/24/08
La Grange	St. Marks Medical Center	L03572	La Grange	22	04/15/08
Lubbock	University Medical Center	L04719	Lubbock	99	04/18/08
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	86	04/17/08
New Braunfels	Christus Santa Rosa Health Care Corporation DBA Christus Santa Rosa Hospital-New Braunfels	L02429	New Braunfels	47	04/25/08
Orange	Chevron Phillips Chemical Company LP	L00031	Orange	57	05/01/08
Palestine	East Texas Physicians Alliance LLP	L05583	Palestine	05	04/22/08
Plano	Dallas Cardiology Associates DBA Heartplace Plano	L05699	Plano	07	04/25/08
San Angelo	Shannon Medical Center	L02174	San Angelo	58	04/30/08
San Antonio	Andrew J. Cottingham, Jr. MD DBA South Texas Eye Institute	L04282	San Antonio	06	04/29/08
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04305	San Antonio	39	04/18/08
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04927	San Antonio	28	04/18/08
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	176	04/23/08
San Antonio	The University of Texas Health Science Center at San Antonio DBA UTSCSA Research Imaging Center	L05556	San Antonio	10	04/22/08
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M & S Imaging Centers	L04506	San Antonio	65	04/22/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	242	04/16/08
Sherman	Sherman Heart Group LLP	L05498	Sherman	09	04/21/08
Stafford	Burzynski Research Institute Inc.	L02948	Stafford	22	04/18/08
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	11	04/24/08
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	10	04/23/08
Texarkana	J M Hurley MD PA DBA Texarkana Cardiology Associates	L04738	Texarkana	12	04/16/08
Throughout Tx	RSI Inspection LLC	L05624	Abilene	16	04/29/08
Throughout Tx	RSI Inspection LLC	L05624	Abilene	15	04/24/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	81	04/22/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	80	04/18/08
Throughout Tx	RSI Inspection LLC	L05624	Abilene	14	04/17/08
Throughout Tx	J-W Wireline Company	L06132	Addison	01	04/24/08
Throughout Tx	Mactec Engineering and Consulting Inc.	L05490	Addison	11	04/22/08
Throughout Tx	TEAM Industrial Services Inc.	L00087	Alvin	183	04/16/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Global X-Ray & Testing Corporation	L03663	Aransas Pass	107	04/24/08
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	70	04/23/08
Throughout Tx	NDE Solutions LLC	L05879	College Station	17	05/01/08
Throughout Tx	NDE Solutions LLC	L05879	College Station	16	04/25/08
Throughout Tx	Cardinal Health	L02048	Dallas	128	04/22/08
Throughout Tx	IRISNDT Inc.	L04769	Deer Park	53	04/29/08
Throughout Tx	IRISNDT Inc.	L04769	Deer Park	52	04/18/08
Throughout Tx	H & H X-Ray Services Inc.	L02516	Flint	71	04/30/08
Throughout Tx	Almac LLC	L05721	Friendswood	05	04/14/08
Throughout Tx	Almac LLC	L05721	Friendswood	06	04/17/08
Throughout Tx	Permian Nondestructive Testing Inc.	L06001	Gardendale	08	04/29/08
Throughout Tx	W. W. Webber LLC	L04904	Hillsboro	13	04/16/08
Throughout Tx	Bandy & Associates Inc.	L05402	Houston	03	05/01/08
Throughout Tx	Geotech Engineering & Testing	L03923	Houston	19	05/01/08
Throughout Tx	RTD Pipeline Services USA LP	L05985	Houston	07	05/01/08
Throughout Tx	Weldsonix Inc.	L05718	Houston	37	04/22/08
Throughout Tx	H & G Inspection Company Inc. ADBA Statewide Maintenance Company	L02181	Houston	224	04/22/08
Throughout Tx	Pacs Construction Laboratories and Testing Services	L05776	Houston	03	04/23/08
Throughout Tx	Professional Service Industries Inc.	L03642	Houston	24	04/16/08
Throughout Tx	Goolsby Testing Laboratories Inc.	L03115	Humble	92	01/22/08
Throughout Tx	Oceaneering International Inc.	L04463	Ingleside	57	04/30/08
Throughout Tx	Integrated Production Services Inc.	L06051	Iowa Park	04	04/23/08
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	11	04/16/08
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	244	04/25/08
Throughout Tx	American X-ray & Inspection Services Inc. DBA A X I S, Inc.	L05974	Midland	11	04/22/08
Throughout Tx	Black Warrior Wireline Corporation	L04473	Odessa	27	04/29/08
Throughout Tx	Big State X-Ray	L02693	Odessa	68	04/25/08
Throughout Tx	Black Warrior Wireline Corporation	L04473	Odessa	26	04/22/08
Throughout Tx	Pro Inspection Inc.	L03906	Odessa	21	04/29/08
Throughout Tx	Sivalls Inc.	L02298	Odessa	38	04/17/08
Throughout Tx	Midwest Inspection Services	L03120	Perryton	106	04/22/08
Throughout Tx	Wind Consultants LLC DBA Renewable Resource Consultants LLC	L06105	Round Rock	02	04/24/28
Throughout Tx	Raba-Kistner Consultants Inc. ADBA Raba-Kistner-Brytest Consultants Inc.	L01571	San Antonio	61	04/24/08
Throughout Tx	Fujirebio Diagnostics Texas Inc.	L04265	Seguin	07	05/01/08
Throughout Tx	Blazer Inspection Inc.	L04619	Texas City	53	04/16/08
Throughout Tx	Frontera Materials Inc.	L04830	Weslaco	14	04/30/08
Tyler	Trinity Mother Frances Health System	L01670	Tyler	134	04/16/08
Webster	Beckman Coulter Inc. DBA Diagnostic Systems Laboratories Inc.	L03084	Webster	37	04/16/08
Wichita Falls	Kell West Regional Hospital LLC	L05943	Wichita Falls	03	04/28/08
Wichita Falls	Jack C. Askins MD	L05588	Wichita Falls	04	04/18/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Hospira Inc.	L03340	Austin	17	04/23/08
Humble	Cardiovascular Association PLLC	L05421	Humble	10	04/28/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200802410
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: May 8, 2008

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Announcement of a Request for Proposal for Investment Banking Services for Single Family Drawdown Bond Program

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing this Request for Proposal ("RFP") from firms interested in providing investment banking services for its proposed Single Family Drawdown Bond Program which would replace TDHCA's current Single Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes Program.

Responses to the RFP must be emailed to TDHCA no later than 4:00 p.m. CDT on Thursday, June 5, 2008. To obtain a copy of the RFP, please email your request to the attention of Heather Hodnett at heather.hodnett@tdhca.state.tx.us or visit the Bond Finance Division web page at www.tdhca.state.tx.us.

TRD-200802438
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 9, 2008

♦ ♦ ♦

Contract for Deed Program Notice of Funding Availability (NOFA)

1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $9,280,000 in funding from the HOME Investment Partnerships Program for contract for deed conversions for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR parts 50 and 58 for environmental requirements, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds.

a) These funds are made available through the Department's deobligated HOME funds reserved for contract for deed conversions and the 2006, 2007, and 2008 allocations of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The funds are set-aside for eligible applicants proposing to provide assistance to eligible homebuyers for the acquisition or the acquisition and rehabilitation, new construction or reconstruction of properties for the purposes of converting an eligible contract for deed to homeownership. In accordance with Rider 6 of the Department's General Appropriations Act, all funds released under this NOFA are to be used for contract for deed conversion for families that reside in a colonia with household income at or below 60% of the Area Median Family Income (AMFI), as defined by HUD.

b) In accordance with §2306.111, Texas Government Code, these funds are not subject to the Regional Allocation Formula (RAF).

c) In accordance with 10 TAC §53.48, this NOFA will be an open application cycle and funding will be available on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis until all funds have been awarded or 5:00 p.m. on May 1, 2009, whichever occurs first, regardless of method of delivery. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet eligibility and minimum threshold criteria will not be considered for funding.

3) Limitation on Funds.

a) Funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

b) The Department awards HOME funds to eligible organizations and the maximum award amount may not exceed $500,000 per contract. Applicants may apply for additional funds of up to $500,000 under this NOFA if the applicant has successfully committed 100% of the project funds of the previous award funded under this NOFA. The maximum amount of funds that may be awarded per applicant is $1 million under this NOFA. The minimum HOME assistance amount per unit may not be less than $1,000 per HOME assisted unit. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilita-

tion or reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

c) The contract term shall not exceed 24 months and performance under the contract will be evaluated according to the following benchmarks:

(i) 6 months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(ii) 8 months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(iii) 12 months, 100% of funds must be committed to Households to be assisted;

(iv) 16 months, 100% of Household's Loans must be closed, if applicable;

(v) 22 months, 100% of construction must be complete for all Households to be assisted; and

(vi) 24 months, 100% funds drawn and 100% of match requirement supplied.

d) In accordance with 10 TAC §53.32(g), the maximum amount of assistance to an eligible household for acquisition and closing costs (including soft costs) for a contract for deed conversion is $25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and the associated land, the Executive Director may grant an exception to exceed this amount; however, the Executive Director will not grant an exception to exceed $40,000 of assistance.

e) In accordance with 10 TAC §53.32(h), the maximum amount of assistance for rehabilitation (including soft costs) to an eligible household for a contract for deed conversion is limited to the OCC Program Activity requirements in 10 TAC §53.31(g) as follows:

i) Rehabilitation that is Reconstruction for 1 - 4 person Household: $60,000;

ii) Rehabilitation that is Reconstruction for 5 - 6 person Household: $67,500;

iii) Rehabilitation that is Reconstruction for 7 or more person Household: $75,000; and,

iv) Rehabilitation that is not Reconstruction: $30,000

f) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85.

4) Eligible and Prohibited Activities.

a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.31 and §53.32 and must involve contract for deed conversion activity.

b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

c) Funds will not be eligible for use in a PJ. Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

5) Eligible and Ineligible Applicants.

a) Eligible applicants include nonprofit organizations, units of general local government, for-profit entities and public housing agencies.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule, with the exception of applicants who have had funds deobligated for delays in completing their contractual requirements as described in 10 TAC §53.42(1). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

6) Matching Funds.

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

7) Affordability Requirements.

a) Applicants should be aware that there are minimum affordability periods necessary for HOME-assisted housing. The unit assisted must be the primary residence of the homebuyer. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. Awarded organizations will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department. Each loan to an assisted homebuyer must be payable to the Department. Each loan for rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence.

b) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homebuyer's principal residence, the remaining loan balance shall become due and payable.

c) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

d) In the event the home is sold (voluntary or involuntary), the assisted homebuyer will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

8) Site and Construction Restrictions.

a) The property assisted must be located in a Colonia. Pursuant to 10 TAC Chapter 53, a Colonia is defined as a geographic area that is located in a county some part of which is within 150 miles of the international border of this state that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

i) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

ii) has the physical and economic characteristics of a Colonia, as determined by the Department.

b) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable local codes, rehabilitation standards, ordinances, zoning ordinances, energy efficiency standards established by §2306.187, Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

c) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

9) Threshold Criteria.

The following threshold criteria listed in this subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise:

a) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $50,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment must be included in the Applicant's resolution.

b) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming a person authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

c) Colonia Status Requirement: Applicants are required to submit support documentation verifying that the targeted Colonia(s) in which the proposed households will be assisted is registered with the Office of the Attorney General or the Secretary of the State as a Colonia. Information regarding Colonia status is available online through the Office of the Attorney General at http://maps.oag.state.tx.us/colgeog/ and through the Secretary of the State at http://www.sos.texas.gov/border/colonias/reg-colonias/index.shtml.

d) Match: Applicants are required to provide eligible match in the amount of 5% or more of the requested project funds. Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide. Match is a threshold requirement.

10) Review Process.

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date." Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within 45 days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to the 10 TAC §53.42 if a submitted Application has an entire volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

c) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

d) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

e) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

11) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on May 1, 2009. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

b) All applications must be submitted, and shall include all documentation, as described in this NOFA and associated application materials.

c) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

d) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

e) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

f) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200802487

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 13, 2008

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Housing Trust Fund Rental Production Program Notice of Funding Availability (NOFA)

1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $1,844,000 in funding from the Housing Trust Fund for financing of affordable rental housing for very low-income and extremely low-income Texans. The availability and use of these funds is subject to the state Housing Trust Fund Rules at 10 Texas Administrative Code (10 TAC) Chapter 51 ("HTF Rules") and Chapter 2306, Texas Government Code in effect at the time an application is submitted. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

2) Allocation of Housing Trust Funds.

a) These funds are made available through General Revenue Funds and local revenues appropriated to the Housing Trust Fund during the 80th Legislative Session for financing rental housing developments which involve new construction, rehabilitation or acquisition and rehabilitation. All funds released under this NOFA are to be used for the subsidizing of affordable rental housing units that target very low-income Texans earning 50 percent or less of Area Median Family Income (AMFI) and are not being funded with Housing Tax Credits. Additionally, if the funds are used to target extremely low-income Texans earning 30 percent or less of the AMFI and those units are not designated to serve extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA §515 program loans and rental assistance or project-based Section 8, the Department may allow a forgivable loan only for those extremely low-income units.

b) In accordance with 10 TAC §51.8, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis. Applications will be accepted until 5:00 p.m. September 1, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

c) The Department will allocate Housing Trust Fund awards as a loan, to eligible recipients for the provision of housing for very low and extremely low-income individuals and families. Funds will be distributed primarily in rural areas and may include developments that have previously received a Housing Tax Credits award from the Department more than five (5) years ago Special emphasis will be given to applications that propose smaller developments. The Department's underwriting guidelines at 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio.

d) Award amounts are limited to no more than $500,000 per development.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program.

3) Eligible and Ineligible Activities and Restrictions.

a) Eligible activities will include the financing, new construction, acquisition and/or rehabilitation of affordable rental housing developments.

b) Ineligible activities include the acquisition, rehabilitation, reconstruction or refinancing of affordable rental housing constructed within the past five (5) years or previously funded by the Department.

c) Ineligible activities include financing for any property that also has received a Housing Tax Credit award within the last five (5) years.

d) Restrictions include the displacement of existing affordable housing. Pursuant to §2306.203(a)(4) of the Texas Government Code, Housing Trust Funds shall not be utilized on a development that has the effect of permanently and involuntarily displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses. If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

4) Eligible and Ineligible Applicants.

a) The Department provides HTF to qualified local units of government, public housing authorities, nonprofit organizations and for-profit entities.

b) Ineligible Applicants will include the following:

i) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the twelve (12) months prior to the current funding cycle;

ii) Applicants, or persons affiliated with the Applicant that have been barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

iii) Applicants or persons affiliated with the Applicant that are subject of enforcement action under state or federal securities law, or are the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

iv) Applicants or persons affiliated with the Applicant that have unresolved audit findings related to previous or current funding agreements with the Department;

v) Applicants or persons affiliated with the Applicant that have delinquent loans, fees or other commitments with the Department, until payment is made;

vi) Applicants who have not satisfied all threshold requirements described in this title, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

vii) Applicants who have submitted incomplete Applications;

viii) Applicants or persons affiliated with the Applicant that have been otherwise barred by the Department;

ix) Applicants are subject to 10 TAC §1.13; or

x) Applicants or persons affiliated with the Applicant that have breached a contract with a public agency.

c) Each Application will be reviewed for its compliance history by the Department, consistent with 10 TAC Chapter 60. Applicants, or persons affiliated with an Application, found to have a Development or Contract in Material Noncompliance with the Department, will have their Application(s) terminated.

5) Affordability Requirements.

a) Pursuant to §2306.203(6) of the Texas Government Code, Applicants proposing multifamily housing, new construction or rehabilitation, will be required to guarantee the Development will remain affordable to income qualified families or individuals for a period of 20 years.

b) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

6) Site and Development Restrictions.

a) Housing that is constructed or rehabilitated with HTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of local codes applications will be required to meet Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply.

b) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §3601 - 3619). Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

7) Threshold Criteria.

a) Housing units subsidized by HTF funds must be affordable to very-low (50% AMFI or below) or extremely low-income (30% AMFI or below) persons. Mixed Income rental developments may only receive funds for units that serve very-low or extremely low-income persons. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) The Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37.

c) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise. Applicants must demonstrate the application can meet the following threshold criteria to be considered for funding:

i) The application is consistent with the requirements established in the HTF rules and the NOFA.

ii) The Applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development.

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target units for individuals or families earning 50% or less of area median family income for the development site.

iv) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department

in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

8) Review Process.

a) Pursuant to 10 TAC §51.8, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "Received Date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in two review phases, as applicable. Applications will continue to be prioritized for funding based on their "Received Date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "Received Date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two will be reviewed for recommendation to the Board by the Committee.

Phase Two will include a comprehensive review for financial feasibility for Development Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available Housing Trust Fund funds before an application has completed all phases of review. In the case that all Housing Trust Fund funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new Housing Trust Fund funds become available, Applications will continue onward with their review without losing their Received Date priority. If Housing Trust Fund funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under the NOFA, the applicant will be notified that no funds remain under the NOFA and that the application will not be processed.

b) If a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined, will be terminated without being processed as an Administrative Deficiency.

c) Pursuant to 10 TAC §51.8(e), a site visit will be conducted as part of the HTF Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HTF funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §51.8(g), it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

9) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on September 1, 2008. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs. If an Application is submitted for two separate housing finance programs where both programs are either open cycle, or competitive, the Application will be handled in accordance with the guidelines of each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) Applications submitted to the Department must be complete and include all support documentation and associated application materials as described in this NOFA.

d) Applicants must submit two complete printed copies of all Application materials as detailed in the 2007 ASPM for Housing Trust Fund.

e) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume.

f) If third party reports are not received at the time of application submission, the Application will be terminated.

g) Application materials including manuals, NOFA, program guidelines, and applicable Housing Trust Fund rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $200.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200802488
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 13, 2008

♦ ♦ ♦

Notice of Public Hearing for the Federal Fiscal Year 2009 Low Income Home Energy Assistance Program Plan

For the federal fiscal year (FFY) 2009 that begins October 1, 2008, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans with home energy. While in the process of deciding how to use Low Income Home Energy Assistance Program (LIHEAP) funds, TDHCA now seeks opinions of groups affected by LIHEAP programs as well as opinions of other interested citizens.

As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA will post the proposed plan on the TDHCA internet site and conduct a public hearing. Primarily, the hearing solicits comments on the proposed use and distribution of FFY 2009 funds provided under LIHEAP. LIHEAP provides funding for the Weatherization Assistance Program (WAP) and utility assistance--known as "Comprehensive Energy Assistance Program (CEAP)."

The public hearing has been scheduled as follows:

Monday, June 9, 2008, 2:00 p.m.

Room #227, Thomas Jefferson Rusk Building

208 East 10th Street

Austin, Texas 78701

A representative from TDHCA will explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plan for LIHEAP subrecipients. A copy of the Draft LIHEAP Plan may be obtained after May 23, 2008, through TDHCA's web site, http://www.tdhca.state.tx.us/ea.htm or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941, or by phone at (512) 475-1435.

Anyone may submit comments on the draft plan in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m., Monday, June 9, 2008. Comments concerning the draft plan may be submitted via the Internet to john.touchet@tdhca.state.tx.us or by fax (512) 475-3935 or through John Touchet at TDHCA using the postal service address provided above. If an individual has questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division, Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact John Touchet, (512) 475-1435 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200802513
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 14, 2008

♦ ♦ ♦

Request for Proposals to Provide Market Analysis of Deaf Smith, Castro and Parmer Counties

The Texas Department of Housing and Community Affairs (TDHCA) is requesting proposals to provide market analysis relating to affordable housing in Deaf Smith, Castro, and Parmer Counties (study area). The market analysis will be made available to the public and may be used by TDHCA to aid in decisions regarding its various programs.

The selected proposal will evaluate the need for additional affordable rental housing in the study area and issue a user friendly report for TDHCA. The respondent will define and analyze submarkets within the study area as part of the overall report.

Submissions are due on May 30, 2008 and the final analysis will be completed by August 18, 2008. See the TDHCA website for the complete request for proposals: http://www.tdhca.state.tx.us/housing-center/index.htm.

Proposals must comply with rules and statutes relating to purchasing in the State of Texas. Late and/or unsigned proposals will not be considered. The person submitting the proposal must have the authority to bind the organization in a contract. Submissions received after 5:00 p.m. (CST) on the due date will not be considered.

Three hard copies of the proposal should be delivered to the following address: (Facsimiles will not be accepted.)

Texas Department of Housing and Community Affairs

Attn: Brenda Hull, Housing Resource Center

221 East 11th Street

P.O. Box 13941

Austin, TX 78711-3941

(512) 305-9038

TRD-200802500
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 13, 2008

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1071 "Table Stakes"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1071 is "TABLE STAKES". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1071 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1071.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 2X, $2.00, $4.00, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $2,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1071 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
2X	WINX2
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1071), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1071-0000001-001.

K. Pack - A pack of "TABLE STAKES" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TABLE STAKES" Instant Game No. 1071 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TABLE STAKES" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR CHIPS play symbols to either WINNING CHIP play symbol, the player wins the PRIZE shown for that CHIP. If a player reveals a "2X" play symbol, the player wins DOUBLE the PRIZE shown for that CHIP! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "2X" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No three or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING CHIPS play symbols on a ticket.

E. No duplicate non-winning YOUR CHIPS play symbol on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR CHIPS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TABLE STAKES" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TABLE STAKES" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated

winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TABLE STAKES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TABLE STAKES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TABLE STAKES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1071. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1071 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	693,840	10.20
$4	580,560	12.20
$5	84,960	83.33
$10	99,120	71.43
$20	42,480	166.67
$50	29,500	240.00
$100	11,446	618.56
$500	950	7,452.63
$2,000	20	354,000.00
$20,000	5	1,416,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1071 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1071, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200802413
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 8, 2008

♦ ♦ ♦

Instant Game Number 1072 "$100,000 Cash Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1072 is "$100,000 CASH SPECTACULAR". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1072 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1072.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $$ SYMBOL, $10.00, $20.00, $25.00, $30.00, $50.00, $100, $200, $500, $1,000, $2,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1072 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$$ SYMBOL	WINALL
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$30.00	THIRTY
$50.00	FIFTY

$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$2,000	TWO THOU
$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $70.00, $100, $200, $400 or $500.

H. High-Tier Prize - A prize of $1,000, $2,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1072), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1072-0000001-001.

K. Pack - A pack of "$100,000 CASH SPECTACULAR" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$100,000 CASH SPECTACULAR" Instant Game No. 1072 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$100,000 CASH SPECTACULAR" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. The player scratches the entire play area. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "$$" play symbol, the player wins ALL 20 PRIZES. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching non-winning prize symbols on a ticket.

C. The "$$" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

D. When the "$$" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBER play symbols matching any WINNING NUMBER play symbol.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

I. The top prize symbol will appear at least once on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100,000 CASH SPECTACULAR" Instant Game prize of $10.00, $20.00, $30.00, $50.00, $70.00, $100, $200, $400 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $30.00, $50.00, $70.00, $100, $200, $400 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$100,000 CASH SPECTACULAR" Instant Game prize of $1,000, $2,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$100,000 CASH SPECTACULAR" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$100,000 CASH SPECTACULAR" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$100,000 CASH SPECTACULAR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 1072. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1072 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	360,000	8.33
$20	240,000	12.50
$30	60,000	50.00
$50	60,000	50.00
$70	7,500	400.00
$100	15,375	195.12
$200	4,250	705.88
$400	1,250	2,400.00
$500	4,625	648.65
$1,000	625	4,800.00
$2,000	275	10,909.09
$100,000	9	333,333.33

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1072 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1072, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 8, 2008

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Instant Game Number 1074 "3 Times Lucky"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1074 is "3 TIMES LUCKY". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1074 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1074.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 3X SYMBOL, CLOVER SYMBOL, $3.00, $6.00, $9.00, $10.00, $15.00, $18.00, $20.00, $24.00, $30.00, $60.00, $90.00, $300, $3,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1074 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$3.00	THREE$
$6.00	SIX$
$9.00	NINE$
$10.00	TEN$
$15.00	FIFTN
$18.00	EGHTN
$20.00	TWENTY

$24.00	TWY FOR
$30.00	THIRTY
$60.00	SIXTY
$90.00	NINTY
$300	THR HUND
$3,000	THR THOU
$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $6.00, $9.00, $15.00, $18.00 or $24.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $90.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1074), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1074-0000001-001.

K. Pack - A pack of "3 TIMES LUCKY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3 TIMES LUCKY" Instant Game No. 1074 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "3 TIMES LUCKY" Instant Game is determined once the latex on the ticket is scratched off to expose 33 (thirty-three) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any LUCKY NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "CLOVER" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "3X" play symbol, the player wins 3 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 33 (thirty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 33 (thirty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. No more than two matching non-winning play symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 10 and $10).

G. The CLOVER (auto win) play symbol will never appear more than once on a ticket.

H. The 3X (tripler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "3 TIMES LUCKY" Instant Game prize of $3.00, $6.00, $9.00, $15.00, $18.00, $24.00, $30.00, $60.00, $90.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $30.00, $60.00, $90.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3 TIMES LUCKY" Instant Game prize of $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "3 TIMES LUCKY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "3 TIMES LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "3 TIMES LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1074. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1074 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	483,840	10.42
$6	322,560	15.63
$9	80,640	62.50
$15	30,240	166.67
$18	50,400	100.00
$24	40,320	125.00
$30	40,320	125.00
$60	16,800	300.00
$90	5,880	857.14
$300	1,386	3,636.36
$3,000	24	210,000.00
$30,000	10	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1074 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1074, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200802415

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 8, 2008

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Instant Game Number 1084 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1084 is "LOTERIA® TEXAS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1084 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1084.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1084 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1084), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1084-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1084 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. No duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $30.00, $33.00, $50.00, $80.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1084. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1084 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	1,451,520	6.94
$4	322,560	31.25
$7	282,240	35.71
$10	181,440	55.56
$17	161,280	62.50
$20	161,280	62.50
$30	15,288	659.34
$33	10,500	960.00
$50	8,568	1,176.47
$80	8,400	1,200.00
$300	4,200	2,400.00
$3,000	92	109,565.22
$33,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1084 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1084, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200802416

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: May 8, 2008

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Instant Game Number 1093 "Blackjack 21"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1093 is "BLACKJACK 21". The play style is "poker".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1093 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1093.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1093 - 1.2D

PLAY SYMBOL	CAPTION
12	TWLVE
13	THRTN
14	FORTN
15	FIFTN
16	SIXTN
17	SVNTN
18	EGHTN
19	NINTN
20	TWNTY
21	DBLER
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 20 (twenty) digit number consisting of the four (4) digit game number (1093), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1093-0000001-001.

K. Pack - A pack of "BLACKJACK 21" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACKJACK 21" Instant Game No. 1093 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BLACKJACK 21" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) Play Symbols. If your HAND beats the DEALER'S HAND within a GAME, the player wins the PRIZE shown for that HAND. If your HAND is Blackjack (21), the player wins DOUBLE the PRIZE shown for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The top prize symbol will appear on every ticket unless otherwise restricted.

C. Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. No duplicate non-winning HAND 1-4 play symbol within a GAME.

E. No duplicate non-winning prize symbol within a GAME.

F. No more than 3 matching non-winning prize symbols on a ticket.

G. No ties between HAND 1-4 play symbols and the DEALER'S HAND play symbol within a GAME.

H. The "21" (doubler) play symbol will only appear as dictated by the prize structure.

I. The "21" (doubler) play symbol will only appear once within a GAME.

J. No prize amount in a non-winning spot will correspond with the HAND 1-4 play symbols (i.e. 20 and $20).

K. No duplicate non-winning GAMES on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK 21" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACKJACK 21" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLACKJACK 21" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BLACKJACK 21" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BLACKJACK 21" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1093. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1093 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	537,600	9.38
$10	336,000	15.00
$15	134,400	37.50
$20	117,600	42.86
$50	67,200	75.00
$100	18,690	269.66
$500	1,428	3,529.41
$1,000	420	12,000.00
$5,000	21	240,000.00
$50,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.15. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1093 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1093, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802417
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 8, 2008

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 5, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Occidental Power Services, Inc. for Retail Electric Provider (REP) Certification, Docket Number 35644 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes a service area defined by customers.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 30, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35644.

TRD-200802475
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 8, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Nooruddin Investments LLC for Retail Electric Provider (REP) Certification, Docket Number 35659 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 30, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35659.

TRD-200802502
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 13, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 5, 2008, Global Connection, Inc. of America filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60682. Applicant intends to reflect a change in ownership/control.

The Application: Application of Global Connection, Inc. of America for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35640.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 29, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35640.

TRD-200802473
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 8, 2008, Phonoscope, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60361. Applicant intends to reflect a change in corporate restructuring.

The Application: Application of Phonoscope, LTD for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35660.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 29, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35660.

TRD-200802503

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 13, 2008

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 5, 2008, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418, and designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of SC TxLink, LLC for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 35641.

The Application: The company is requesting ETC and ETP designation in the exchanges and study areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, Verizon Southwest, and Embarq.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by June 12, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas 1-800-735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 35641.

TRD-200802474
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 6, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Managed Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35647 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 29, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35647.

TRD-200802476
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Application to Amend Certificated Service Area Boundaries in Brooks County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 6, 2008, for an amendment to certificated service area boundaries within Brooks County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. and AEP Texas Central Company to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Brooks County, Docket Number 35649.

The Application: Medina Electric Cooperative, Inc. (MEC) and AEP Texas Central Company (TCC) seek a boundary change in order to allow MEC to provide service to a rural area upon customer request. For TCC to provide service to the relevant area, it would require TCC to construct approximately 12,000 feet of new line. MEC can provide service to the requested area by constructing approximately 4,200 feet of new line. As joint applicants, both utilities are in agreement and support the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 30, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 35649.

TRD-200802478
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Application to Amend Certificated Service Area Boundaries in LaSalle County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 8, 2008, for an amendment to certificated service area boundaries within LaSalle County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. and AEP Texas Central Company to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within LaSalle County, Docket Number 35657.

The Application: Medina Electric Cooperative, Inc. (MEC) and AEP Texas Central Company (TCC) seek a boundary change in order to allow TCC to provide service to a new residence upon customer request. TCC has existing distribution line on the ranch and can provide service to the relevant area in the most economical manner. As joint applicants, both utilities are in agreement and support the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 30, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the

commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 35657.

TRD-200802483
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Application to Amend Certificated Service Area Boundaries in Medina County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 6, 2008, for an amendment to certificated service area boundaries within Medina County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. and AEP Texas Central Company to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Medina County, Docket Number 35648.

The Application: Medina Electric Cooperative, Inc. (MEC) and AEP Texas Central Company (TCC) seek a boundary change in order to allow MEC to provide service to an area without having to traverse Interstate 35. For TCC to provide service to the relevant area, it would require TCC to traverse Interstate 35 in some manner. As joint applicants, both utilities are in agreement and support the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 30, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 35648.

TRD-200802477
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Notice of Workshop - Rulemaking to Update Substantive Rule §25.93 for the Nodal Market Transactions and Associated Filing Software

The staff of the Public Utility Commission of Texas (PUC or commission) has initiated Project Number 35444, *Rulemaking to Update Substantive Rule §25.93 for the Nodal Market Transactions and Associated Filing Software*. PUC Substantive Rule §25.93 requires any person, municipally owned utility, electric cooperative and river authority that owns electric generation facilities and offers electricity for sale in this state as well as power marketers as defined in PUC Substantive Rule §25.5, relating to Definitions, to submit all wholesale transactions for the sale of electricity that begin or terminate in Texas, or occur entirely within Texas, including areas of the state not served by the Electric Reliability Council of Texas (ERCOT).

The commission will hold a workshop to discuss the rule on Monday, June 16, 2008, at 10:00 a.m. in the Commissioners' Hearing Room, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78701.

Questions concerning Project Number 35444 should be referred to Tony Grasso, Market Economist, Wholesale Markets Section of the Competitive Markets Division, (512) 936-7385. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200802464
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2008

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Texas Residential Construction Commission

Notice of Application for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective September 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2), the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Kurk-McGinley Enterprises, Inc., 6700 Woodlands Pkwy., Ste. 230-318, The Woodlands, Texas 77382. Kurk-McGinley Enterprises Inc. holds TRCC builder registration #1765. The applicant's registered agent is Michael McGinley.

Steve Snider, Inc., 3822 Normandy, Dallas, Texas 75205. Steve Snider Inc. holds TRCC builder registration #1853. The applicant's registered agent is Patricia Snider.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711-3509. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200802501
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: May 13, 2008

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Texas Department of Transportation

Notice of Intent - State Highway 71/United States Highway 290, Travis County, Texas

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department), in cooperation with the Federal Highway Administration (FHWA), is issuing this notice to advise the public that a lim-

ited-scope Supplemental Environmental Impact Statement (SEIS) will be prepared for a proposed transportation project. The limited scope of the project is State Highway (SH) 71 from Riverside Drive to SH 130, in Travis County, Texas. The project length is approximately 6.5 miles. The improvements proposed between Riverside Drive and Farm-to-Market Road (FM) 973 were originally considered in a Final Environmental Impact Statement (FEIS) covering improvements to SH 71/US 290 from Ranch-to-Market Road (RM) 1826 to FM 973. A Record of Decision (ROD) was issued by FHWA on August 22, 1988. The mid-section of the original project limits, between Joe Tanner Lane and Riverside Drive, has been constructed. Since the issuance of the SH 71/US 290 ROD, changes in adjacent land use, the construction of SH 130, and proposed design modifications have necessitated supplementation of the original FEIS to evaluate the change in potential impacts from the proposed project. As a result, the unconstructed eastern portion of the original FEIS, between Riverside Drive and FM 973, will be the subject of a limited scope SEIS. Due to the proximity of intersections on SH 71 at FM 973 and at the recently constructed SH 130, the SH 71/US 290 SEIS would extend beyond the limits of the original FEIS to include the new interchange at SH 130 to provide for a more logical terminus and transition back to existing SH 71 east of SH 130. Information from the FEIS and subsequent ROD (June 5, 2001) for SH 130 from IH 35 north of Georgetown to IH 10 near Seguin will be incorporated into the subject SEIS. Areas within the city of Austin are included in the study area.

The project is listed in the Capital Area Metro Planning Organization (CAMPO) Mobility 2030 Plan, as amended, (the long-range transportation plan) as a six-lane tolled freeway between Riverside Drive and Presidential Avenue. From Spirit of Texas Drive to SH 130, the project is listed as a six-lane freeway but is being evaluated for tolling. The need for the SH 71 project, as stated in the 1988 FEIS, has resulted from congestion and low travel speeds caused by rapid population growth in the Austin metropolitan area. Crash data have also indicated safety issues as a primary need for this project. Additionally, the economic growth of the SH 71/US 290 corridor is dependent on the ability of the roadway network to accommodate both local trips created by recent nearby development as well as regional through traffic. In order to address these needs, the purpose of the proposed project is to increase traffic flow capacities and improve mobility in the roadway corridor while enhancing safety and system interconnectivity, in compliance with the adopted **CAMPO Mobility 2030 Plan**, as amended.

The SEIS will evaluate potential impacts from construction and operation of this project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources. The original FEIS identified impacts that include displacement of residences and businesses and increased traffic noise levels. However, the FEIS analyzed improvements to SH 71/US 290 from RM 1826 to FM 973. The current project covers approximately 6.5 miles. To date, the department has not identified any known or potential significant impacts from the modified alignment alternative on the human environment.

The department will consider a number of alternatives intended to satisfy the identified need and purpose. The alternatives will include the no-build alternative and build alternatives. Roadway build alternatives include the 1988 FEIS alternative and a modified alignment alternative. The 1988 alignment generally takes right-of-way from north of existing SH 71. The modified alignment would generally take additional right-of-way north of SH 71 north of the Austin Bergstrom International Airport; and then shift south of SH 71 east of Shapard Lane.

The project may require the following approvals by the federal government: United States Army Corps of Engineers (USACE) Section 404; Section 401 Water Quality Certification; and National Pollutant Discharge Elimination System (NPDES). The actual approvals required may change after the department completes field surveys and selects the alignment for the project.

The department will complete the procedures for public participation and coordination with other agencies as described in one or both the National Environmental Policy Act and state law. The department will conduct appropriate public involvement to solicit public comment during the environmental review process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. The department will also send correspondence, describing the proposed project and soliciting comments, to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project. The department invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the department at the address set forth below. The department will not hold scoping meetings concerning the supplemental EIS because the scope of the project has already been set. A public meeting will be held on June 24, 2008 at 6:00 PM at the Del Valle High School located at 5201 Ross Road, Del Valle, Texas 78617.

A proposed schedule for completion of the environmental review process is not available.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Enoch N. Needham, P.E., Director, Transportation Planning and Development, Texas Department of Transportation, Austin District, P.O. Box 15426, Austin, Texas 78761-5426; phone (512) 832-7000.

TRD-200802409
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 7, 2008

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University of Houston

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston furnishes this notice of request for proposal (RFP). The University of Houston seeks proposals from qualified consulting firms to provide advice and consultation in providing a financial feasibility study in constructing a major addition to its athletic football stadium. This advice and consultation is authorized and supported by the UH System Chancellor/UH President as being of substantial need and necessary in performing the needed evaluation. Interested parties are invited to express their interest and describe their capabilities on or before June 23, 2008.

The term of the contract is to be for a period beginning on or about June 24, 2008 and ending August 18, 2008. Further technical information can be obtained from Beverly Ruffin at (713) 743-8859. All proposals must be specific and must be responsive to the criteria set forth in this request.

SCOPE OF WORK: The University is in the preliminary stages of constructing an end-zone facility on the north side of its athletic sports facility--Robertson Stadium. The facility will add 131,570 gross square feet of office space, team areas and public space. The new facility will provide club level seating for 766 and another 340 seats within 22 suites. In addition, and included in the gross square feet above, a net increase of 14,240 square feet will provide general seating for 4,348. The Consultant will provide advice to assist the University in evaluating the feasibility of constructing the end-zone facility by: (1) Reviewing current market trends in intercollegiate sports in the Houston area; (2) Prepare financial plan outlining the Universities challenges, which will include five-year financial projections focused on maximizing revenue to meet expense obligations; (3) Provide other services, including but not limited to preparing for and participating in meetings with the University and departmental management and other parties as necessary; and (4) provide a management report that includes an overview of the local intercollegiate sports market and a pro forma Income Statement of changes in revenue and expenses as a direct result of the additional club seats and suites, with support and assumptions for each revenue stream and expense category.

PROVISION OF INFORMATION: Each Proposer must provide at least the following information: (1) description of the qualifications of the firm for performing market surveys and revenue projections; (2) the names, experience, technical expertise and licenses currently held of each staff person who may be assigned to work on such matters, and the availability of the lead person and others assigned to the project; (3) demonstration of specialization in the collegiate sports marketplace; (4) a listing of recent sports surveys and revenue projections in a university setting, project names and locations, project sizes, and references including contact information; (5) a sample management report demonstrating the format that will be utilized containing sample results, findings, values, etc.; (6) hourly billing rates for staff who would be assigned to perform services, flat fees, or other fee arrangements directly related to the achievement of specific goals, and billable expenses; (7) confirmation of willingness to comply with policies, directives, and guidelines of the UH System--as well as all laws of the State of Texas; (8) State of Texas corporate filings, DBA name, registration and tax identification number; (9) describe in sufficient detail the methodology you will employ and tasks you will perform to achieve the goals of the project as set forth in the RFP; and (10) that your firm, or any professionals employed by your firm, are not currently a defendant in any criminal proceedings or under criminal investigation; or any administrative action, including state and or federal regulatory agency proceedings, which resulted in censure or the suspension or revocation of any licenses. If yes, please describe.

INFORMATION ABOUT THE UNIVERSITY OF HOUSTON SYSTEM: The University of Houston System is the state's only metropolitan higher education system, encompassing four universities and two multi-institution teaching centers. The universities include the University of Houston, a nationally recognized doctoral degree-granting, comprehensive research university; the University of Houston-Downtown, a four-year undergraduate university beginning limited expansion into graduate programs; and the University of Houston-Clear Lake and the University of Houston-Victoria, both upper division and master's-level institutions. The centers include the UH System at Sugar Land in Fort Bend and the UH System at Cinco Ranch. In addition, the UH System includes KUHF-FM, Houston's National Public Radio and classical radio station, and KUHT-TV, the nation's first educational television station.

GENERAL INSTRUCTIONS: Submit one (1) original and five (5) copies of your proposal in a sealed envelope to: Beverly Ruffin, Office of Finance, University of Houston, 500 Gulf Freeway, Building 2, Room 219 , Houston, Texas 77204-0911 before 3:00 p.m. June 23, 2008. The original shall be prepared on a word processor and formatted in at least 10-point-font that is clearly readable. The copies shall be of good, readable quality.

COMPLIANCE WITH RFP REQUIREMENTS: By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. The University, at its sole discretion, may disqualify a Proposal from consideration, if the University determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

SIGNATURE, CERTIFICATION OF PROPOSER: The Proposal must be signed and dated by a representative of the Proposer who is authorized to bind the Proposer to the terms and conditions contained in this RFP and to compliance with the information submitted in the proposal. Each Proposer submitting a Proposal certifies to both (i) the completeness, veracity, and accuracy of the information provided in the Proposal; and (ii) the authority of the individual whose signature appears on the Proposal to bind the Proposer to the terms and conditions set for in this RFP. Proposals submitted without the required signature shall be disqualified.

OWNERSHIP OF PROPOSALS: All Proposals become the physical property of the University upon receipt.

USE, DISCLOSURE OF INFORMATION: Proposers acknowledge that the University is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a Proposal includes proprietary data, trade secrets, or information the Proposer wishes to except from public disclosure, then the Proposer must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL--PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the Proposer as proprietary will be used by the University only for purposes related to or arising out of the (i) evaluation of Proposals; (ii) selection of a Proposer pursuant to the RFP process; and (iii) negotiation and execution of a Contract, if any, with the Proposer selected.

RESCISSION OF PROPOSAL: A Proposal can be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals pursuant to a written request sent to the Treasurer.

REQUEST FOR CLARIFICATION: The University reserves the right to request clarification of any information contained in a Proposal.

COMMUNICATIONS WITH SYSTEM PERSONNEL: Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing University business operations, Proposers are expressly and absolutely prohibited from engaging in communications with University personnel who are involved in any manner in the review and/or evaluation of the Proposals; selection of a Proposer; and/or negotiations or formalization of a Contract. If any Proposer engages in conduct or communications that the University determines are contrary to the prohibitions set forth in this section, the University may, at its sole discretion, disqualify the Proposer and withdraw the Proposer's Proposal from consideration.

EVALUATION OF PROPOSALS: The Proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are (i) incomplete; (ii) not properly certified and signed; (iii) not in the required format; or (iv) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by the University.

DISCUSSIONS WITH PROPOSERS: The University may conduct discussions and/or negotiations with any Proposer that appears to be eligible for award ("Eligible Proposer") pursuant to the selection crite-

ria set forth in this RFP. In conducting discussions and/or negotiations, the University will not disclose information derived from Proposals submitted by competing Proposers, except as and if law requires disclosure.

MODIFICATION OF PROPOSALS: All Eligible Proposers will be afforded the opportunity to submit best and final Proposals if: (a) negotiations with any other Proposer result in a material alteration to the RFP; and (b) such material alteration has a cost consequence that could alter the Proposer's quotations regarding rates for Services.

SELECTION OF PROPOSER: The Proposer selected for award will be the Proposer whose Proposal, as presented in response to this RFP and as determined by the University in accordance with the evaluation criteria set forth in this RFP, to be the most advantageous to the University. Proposers acknowledge that the University is not bound to accept the lowest-priced Proposal.

EVALUATION OF PROPOSALS: Submission of a Proposal indicates the Proposer's acceptance of the evaluation process set forth in this RFP and the Proposer's acknowledgement that subjective judgments must be made by the University in regard to the evaluation process.

CRITERIA FOR EVALUATION: Evaluation of Proposals and award to the Selected Proposer will be based on the following factors, as weighted and listed as follows: (i) Demonstrated ability of the Proposer to fulfill current and predicted University needs (50%); (ii) Stability and success of the Proposer's business profile (40%); and (iii) Rates for Services quoted (10%).

CONSIDERATION OF ADDITIONAL INFORMATION: The University reserves the right to ask for and consider any additional information deemed beneficial to the University in evaluation of the Proposals.

TERMINATION: This RFP in no manner obligates the University of Houston to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University, and the University may terminate the RFP process and review of all proposals without penalty or obligation at any time prior to the signing of a contract. The University reserves the right to cancel this RFP at any time and to reject any or all proposals, for any reason.

TRD-200802512
Brian S. Nelson
Associate General Counsel/Executive Director
University of Houston
Filed: May 14, 2008

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University of North Texas

Notice of Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

To assist the University of North Texas (UNT) in providing an assessment of the current dining program relative to industry standards and current trends. Generally, the scope of services supplied by the selected vendor will include the following: (1) review of UNT financial, student, and operating data and (2) site visits to assess the appearance and functionality of operating units, catering and retail operations, and administrative support and management of existing dining services.

Name and Business Address of Consultant:

Envision Strategies, LLC

5325 South Valentia Way

Greenwood Village, CO 80111

Total Value and Beginning and Ending Dates of Contract:

Value: $66,275.00

Beginning Date: May 1, 2008

Ending Date: August 31, 2009

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various dates--as requested by Asst. VP of Business Services and in any event not less that quarterly.

TRD-200802443
Joey Saxon
Director of Purchasing and Payment Services
University of North Texas
Filed: May 12, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).